

5-12-82
Vol. 47 No. 92
Pages 20285-20542

Wednesday
May 12, 1982

Federal Register



FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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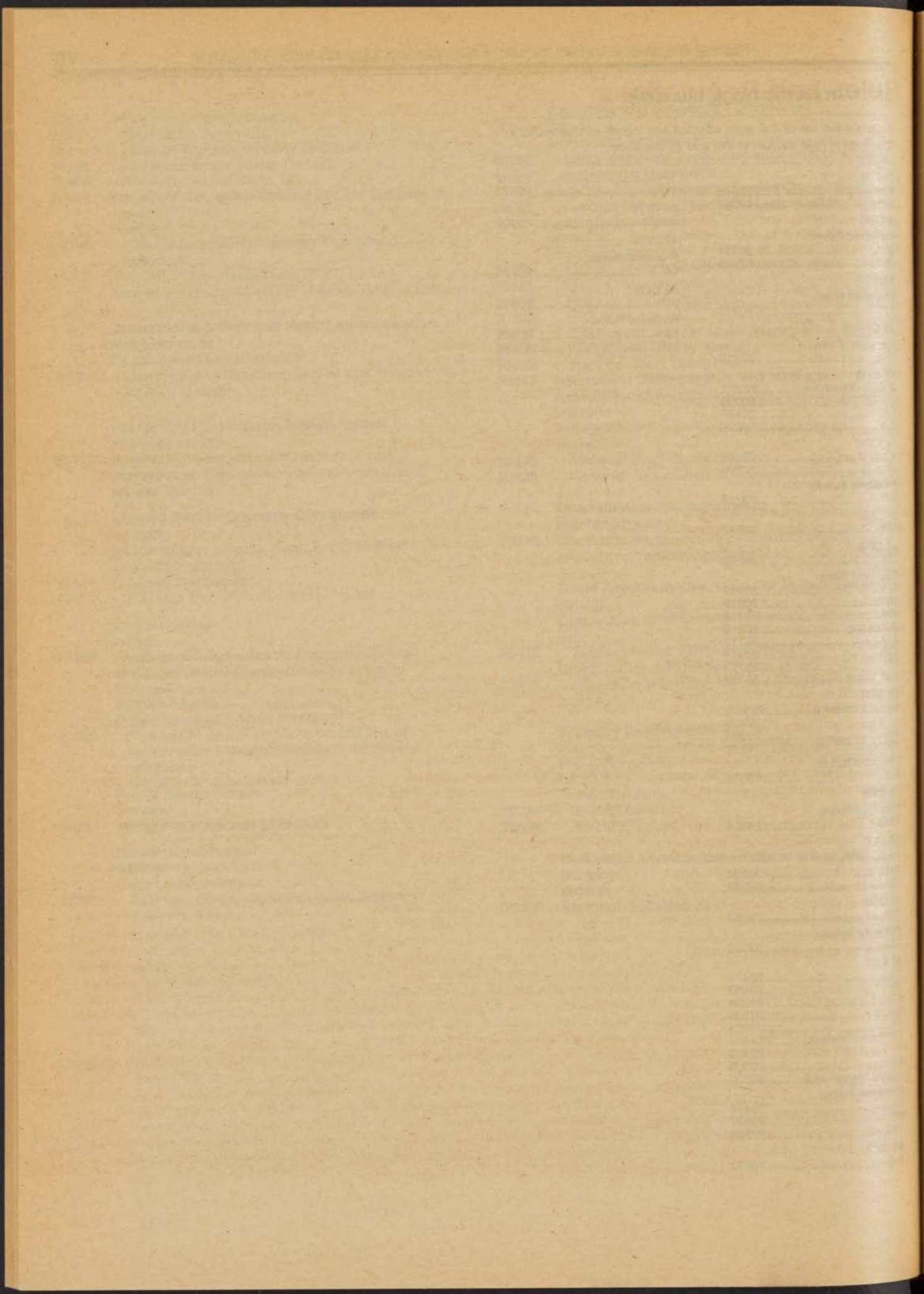
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Rules and Regulations

Federal Register

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Peach Reg. 1, Amdt. 1]

Fresh Peaches Grown in Georgia: Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment of interim rule and extension of the period for comments.

SUMMARY: This amendment lowers the minimum grade regulation on Georgia peaches by requiring that the peaches be at least 75 percent U.S. No. 1 quality. The current regulation requires these peaches to be at least 85 percent U.S. No. 1 quality. This action recognizes the effects of recent cold weather on the development of the Georgia peach crop. This amendment is necessary to assure shipment of adequate supplies of peaches.

DATES: This amendment of the interim rule is effective May 6, 1982, through July 5, 1982, and extends the period for comments through June 10, 1982. Any comments which are received will be considered prior to issuance of a final rule to become effective July 6, 1982. The final rule would require that Georgia peaches be at least 85 percent U.S. No. 1.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a

"non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would not measurably affect costs for the directly regulated handlers.

This amendment is issued under the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), regulating the handling of peaches grown in Georgia. 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 on information submitted by the Industry Committee, established under the order, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on April 30, 1982, to consider supply and market conditions and other factors affecting the need for amendment of the current regulation. It recommends lowering the grade requirement for shipments of fresh peaches grown in Georgia from 85 percent U.S. No. 1 to 75 percent U.S. No. 1 grade. The committee reports recent cold weather and excessive rainfall has reduced the quality of the crop, particularly the early maturing varieties. This action is necessary to assure shipment of adequate supplies of Georgia peaches consistent with the quality of the crop and current and prospective demand. It is found 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), because of insufficient time between the date when information became available upon which this amended regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. 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. This amendment relieves regulations on the handling of peaches.

List of Subjects in 7 CFR Part 918

Marketing agreement and orders, Peaches, Georgia.

PART 918—FRESH PEACHES GROWN IN GEORGIA

Therefore, the provisions of paragraph (a)(1) in § 918.324 Peach Regulation 1 (47 FR 18571) are revised to read as follows: (§ 918.324 expires July 5, 1982, and will not be published in the annual Code of Federal Regulations).

§ 918.324 Peach Regulation 1.

(a) * * *

(1) During the period May 6, 1982, through July 5, 1982, do not grade at least 75 percent U.S. No. 1 quality: *Provided*, That peaches with well-healed hail marks or split pits not scored as serious damage, or peaches with not more than 1 percent decay, may be shipped if they otherwise meet the requirements of this subparagraph.

* * * * *

Dated: May 6, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-12874 Filed 5-11-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1046

[Milk Order No. 46; Docket No. AO-123-A49]

Milk in the Louisville-Lexington-Evansville Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action adopts on an emergency basis an amendment to the Louisville-Lexington-Evansville order. The change will provide handlers with limited transportation credits from the marketwide pool for certain Class II and Class III milk transferred or diverted to unusually distant outlets for surplus disposal. The change, which will apply only through June 30, 1982, was considered at a public hearing held on March 16-17, 1982, in East Point, Georgia. The order change was proposed by a cooperative association that represents dairy farmers who supply milk to the market.

The change is necessary to reflect current marketing conditions and to insure that all producers in the market share more equitably in the cost of disposing of unusually large supplies of surplus milk that are expected this spring. Marketing conditions are such that prompt amendatory action is required. For this reason, a recommended decision and the opportunity to file exceptions thereto were omitted. Cooperative associations representing more than two-thirds of the producers in the market have approved the issuance of the amended order.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202/447-4829).

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued March 4, 1982; published March 10, 1982 (47 FR 10230).

Emergency Final Decision: Issued April 19, 1982; published April 23, 1982 (47 FR 17530).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the

Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective upon publication in the Federal Register. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The decision of the Assistant Secretary containing all amendment provisions of this order was issued April 19, 1982 (47 FR 17530). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective upon publication in the Federal Register and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1046

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.60, paragraph (g) is added to read as follows:

§ 1046.60 Handler's value of milk for computing uniform price.

(g) With respect to milk marketed on and after the effective date hereof through June 1982, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II or Class III milk pursuant to § 1046.42(b)(3) or § 1046.42(d)(2) by a rate for each truckload of milk so moved that is equal to 3.6 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 250 miles (as determined by the market administrator) from the nearest of the following locations: the city hall in Louisville, Kentucky; the city hall in Lexington, Kentucky; the city hall in Evansville, Indiana; the transferor plant; or, for diversions, the pool plant of last receipt for the major portion of the milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

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

Effective date: May 12, 1982.

Signed at Washington, D.C., on May 6, 1982.

John E. Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-12906 Filed 5-11-82; 8:45 am]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE
COMMISSION

17 CFR Part 200

[Release Nos. 33-6399, 34-18700, 35-22483,
39-718, IC-12412, IA-802, FOIA-63]

Delegation of Authority to the General
Counsel

AGENCY: Securities and Exchange
Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing delegation of authority and requests for information to delegate authority to the General Counsel to consider appeals from decisions of the Freedom of Information Act Officer.

EFFECTIVE DATE: May 12, 1982.

FOR FURTHER INFORMATION CONTACT:

Ann Stansbury, Esq., Office of the General Counsel, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2427.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) ("FOIA") provides that any person who requests records thereunder shall be notified of the right to appeal to the head of the agency an initial adverse determination with respect to the release of such records. The Commission's rules pertaining to information and requests, Subpart D of 17 CFR Part 200, provide that the Commission's FOIA Officer will make the initial determination whether or not to release records and, where it is determined not to comply with the request, notify the requestor of the determination, the reasons therefor, and the right to appeal to the Commission. (17 CFR 200.80(d)(5)). The requestor who has been so notified, or who has not received a response within the allowed time period, may apply for an order of the Commission directing that the record be made available. If on appeal the Commission upholds the decision of the FOIA Officer, the Commission will so advise the requestor and is required to notify the requestor of the names and positions of the members of the Commission responsible for the denial, as well as of the provisions in the FOIA for judicial review. (17 CFR 200.80(d)(6)).

Denials of requests for a waiver of fees may also be appealed to the Commission. (17 CFR 200.80(e)(4)).

The Commission also has published its procedures for considering requests for confidential treatment of records that are the subject of FOIA requests. (17 CFR 200.83). In general, the FOIA Officer makes a determination as to

confidential treatment whenever the Officer receives a request for information that is the subject of a previously filed request for such treatment. If the FOIA Officer determines that confidential treatment is not warranted, based on consideration of the request and any additional information submitted to substantiate a finding of confidentiality, the confidential treatment requestor may appeal that determination to the Commission.

Under the current procedures, when an FOIA or confidential treatment appeal is pending before the Commission, the Office of the General Counsel reviews the matter and presents its recommendation to the Commission as to whether the FOIA Officer's decision should be upheld or reversed. The Commission now finds that, due to the large number of FOIA appeals and the time necessary to bring such appeals before the Commission, it is in the interest of the public and of the Commission to delegate the authority to decide FOIA and confidential treatment appeals to the General Counsel.

The Commission believes that the process of administrative review could be carried out more expeditiously if delegated to the Office of the General Counsel. The process of scheduling appeals for consideration by the Commission, including publication of notice in fulfillment of the requirements of the Government in the Sunshine Act (5 U.S.C. 552b) often makes it difficult to meet the twenty-day limit that the FOIA sets for consideration of appeals. If appeals were considered pursuant to delegated authority, it appears that administrative review could be carried out more swiftly.

The Commission believes it appropriate to delegate its FOIA review function to the General Counsel because the General Counsel in most cases is not involved in the initial decision to grant or deny requests for records and confidentiality. Although the Commission considers each FOIA appeal separately, it has found that in routine cases it generally approves the recommendations of the Office of General Counsel, which are based on the application of case law and other authoritative interpretations of the FOIA to the facts of each particular case. In addition, the General Counsel defends the Commission in suits brought to compel or prohibit disclosure of information, and may be expected to decide FOIA appeals in a thorough and impartial manner.

Nevertheless, in appropriate cases involving difficult or important issues,

the General Counsel would be expected to bring the matter to the Commission for decision.

Accordingly, the Commission hereby amends §§ 200.21(a)(17 CFR 200.21(a)) and 200.30-14 (17 CFR 200.30-14) of the Commission's rules relating to general organization to delegate to the General Counsel the authority to make determinations with respect to appeals from decisions of the Commission's Freedom of Information Act Officer. The Commission also amends Subpart D of 17 CFR, Part 200, §§ 200.80 and 200.83 (17 CFR 200.80 and 200.83), its regulation concerning information and requests, to set forth the procedure by which the General Counsel will consider and act on Freedom of Information Act and confidential treatment appeals.

Statutory authority: In amending §§ 200.21(a) (17 CFR 200.21(a)) and 200.30-14 (17 CFR 200.30-14) with respect to delegated authority, the Commission is acting pursuant to the Act of August 20, 1962, Pub. L. No. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2), as amended by the Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 163 (June 4, 1975). The Commission's regulation concerning information and requests, Subpart D of 17 CFR Part 200, which is hereby amended, is issued under the Freedom of Information Act, 80 Stat. 383, as amended, 31 Stat. 54; section 19 of the Securities Act of 1933, 48 Stat. 85 as amended; section 23 of the Securities Exchange Act of 1934, 48 Stat. 901, as amended; section 20 of the Public Utility Holding Company Act of 1935, 49 Stat. 833; section 319 of the Trust Indenture Act of 1939, 53 Stat. 1173; section 38 of the Investment Company Act of 1940, 54 Stat. 841; and section 211 of the Investment Advisers Act of 1940, 54 Stat. 855 (5 U.S.C. 552, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11).

The Commission finds, in accordance with 5 U.S.C. 553(b) (A) of the Administrative Procedure Act, that the foregoing regulation relates solely to agency organization, procedure, or practice and that notice and public procedure in accordance with 5 U.S.C. 553 are not necessary, pursuant to subsection (b) thereof. In addition, the Commission finds that the foregoing action does not impose any burden on competition.

List of Subjects in 17 CFR Part 200

Freedom of information.

Text of Amendments

Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

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

1. In § 200.21 paragraph (a) is revised to read as follows:

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution and for the review of requests by domestic and foreign governmental authorities and self-regulatory organizations for access to materials contained in Commission files concerning a non-public investigatory proceeding in which a formal order of investigation has been entered. In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or office head, or on his or her own motion, with respect to interpretations involving questions of law; for reviewing and advising the Commission upon the legal aspects and policy implications of pre-argument memorandums and draft Commission opinions prepared by the Office of Opinions and Review; for the conduct of administrative proceedings relating to the disqualification of professional persons from practice before the Commission; for the preparation of Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. The General Counsel is also responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission and is responsible for investigating any claims of staff improprieties. Additionally, he or she has responsibility with the Office of Opinions and Review for dealing with general problems arising under the Administrative Procedure Act, including (with the Office of Opinions and Review) the revision or adoption of rules of practice. He or she is responsible

(with the Director of Personnel) for administering and interpreting the Commission's Conduct Regulation. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Personnel Management and the Department of Justice. The General Counsel also is responsible for coordinating and reviewing the interpretative positions of the various divisions and offices. In addition, he or she is responsible for appropriate disposition of all Freedom of Information Act appeals pursuant to the authority delegated in § 200.30-14, and is the Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

2. Section 200.30-14 is revised to read as follows:

§ 200.30-14 Delegation of Authority to the General Counsel.

Pursuant to the provisions of Pub. L. 94-29, 89 Stat. 163, Pub. L. 87-592, 76 Stat. 395, 15 U.S.C. 78d-1, 78d-2, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the General Counsel of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) Grant waivers of imputed disqualification requested pursuant to 17 CFR 200.735-8(d);

(b) Determine whether the Commission will submit, after consultation with any Division or Office of the Commission designated by the Commission, and amicus curiae brief in private litigation on issues previously considered and designated by the Commission as appropriate for the exercise of delegated authority. A list of the issues designated by the Commission as subject to this delegated authority and, where determined by the Commission, the position to be taken on each such issue, may be obtained on request addressed to Securities and Exchange Commission, Washington, D.C. 20549; and

(c) Determine the appropriate disposition of all Freedom of Information Act and confidential treatment appeals in accordance with §§ 200.80(d)(6), 200.80(e)(4), 200.83(e), 200.83(f), and 200.83(h).

3. In § 200.80 paragraphs (d)(5) and (e)(4) are revised to read as follows:

§ 200.80 Commission records and information.

(d) * * *

(5) *Initial determinations, denials.* With respect to any record that is generally considered nonpublic as described in paragraph (b) of this section, the Freedom of Information Act Officer of the Commission will determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of a request for inspection of the record or for a copy (or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section) whether to comply with such request, and shall immediately notify the person making such request of such determination and, where it is determined not to comply, the reasons therefor, and of the right of such person to appeal to the General Counsel any adverse determination: *Provided*, That a Director of a staff Division of the Commission or Office head whose zone of responsibility relates to the record requested (See 17 CFR 200.13, et seq.) may make a determination that the record or copy is not lawfully required to be made available and should not be made available, in which case he, and not the Freedom of Information Act Officer, shall make the required notification. The notification of denial of any request for records shall set forth the name and title or position of each person responsible for the denial.

(6) *Administrative review.* Any person who has been notified pursuant to paragraph (d)(5) of this section that his request for inspection of a record or for a copy has been denied, or who has received no response to a request for a record or copy within ten days (or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section) after his request was received by the Commission's staff, may appeal to the General Counsel the adverse determination or the failure to respond.

(i) The appeal shall be in writing, shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by a legend such as "Freedom of Information Act Appeal."

and shall identify the record in the form in which it was originally requested.

(ii) The appeal should be delivered to the General Counsel, with a copy to the Office of the Freedom of Information Act Officer, or sent by mail to the Freedom of Information Act Officer.

(iii) The appeal may include such facts and cite such legal or other authorities as the person submitting the appeal may consider appropriate.

(iv) The General Counsel shall have the authority to grant or deny all appeals, in whole or in part, and to release as an exercise of discretion records exempt from mandatory disclosure under 5 U.S.C. 552(b). In appropriate cases he or she may, in his or her sole and unfettered discretion, refer appeals to the Commission for determination.

(v) A determination with respect to any appeal shall be made within twenty days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such appeal or within such extended period as may be permitted in accordance with paragraph (d)(7) of this section.

(vi) A denial of an appeal in whole or in part shall set forth the basis for the denial, and shall advise the requester that judicial review of the decision is available in accordance with 5 U.S.C. 552(a)(4).

* * *

(e) * * *

(4) *Waiver or reduction of fees.*

Requested records shall be furnished without charge or at reduced charge whenever it shall be determined by the Director of the Office of Consumer Affairs and Information Services that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Requests for waiver or reduction of fees for searching and/or copying may be submitted with the original request for records and may state such facts as the requester may consider appropriate. Denials of requests for a waiver or reduction of fees may be appealed to the General Counsel in accordance with the procedure set forth in paragraph (d)(6) of this section.

4. In § 200.83 paragraphs (e), (f), and (h) are revised to read as follows:

§ 200.83 Confidential treatment procedures under the Freedom of Information Act.

(e) *Appeal from initial determination that confidential treatment is not warranted.* (1) If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment

is not warranted with respect to all or part of the information in question, the person requesting access to the information under the Freedom of Information Act and the person requesting confidential treatment will be so notified by telephone, telegram or express mail. The person requesting confidential treatment will also be informed that any appeal of such decision must be taken to the Commission's General Counsel within ten calendar days of the date of the notice. Information which is determined not to be entitled to confidential treatment may be released under the Freedom of Information Act ten calendar days after notice to the person requesting confidential treatment. If within that ten calendar day period the General Counsel has actually received an appeal from the person requesting confidential treatment, the person requesting access to the information under the Freedom of Information Act will be informed of the pending appeal and that no disclosure of the information will be made until the appeal is resolved.

(2) Any appeal of a denial of a request for confidential treatment shall be in writing, and shall be clearly and prominently identified on the envelope or other cover and at the top of the first page by the legend "FOIA Confidential Treatment Appeal." The appeal should be delivered or sent by mail to the General Counsel, with a copy to the Freedom of Information Act Officer. The person requesting confidential treatment may supply additional substantiation of the request for confidential treatment in connection with the appeal to the General Counsel.

(3) The General Counsel shall have the authority to consider all appeals from decisions of the Freedom of Information Act Officer with respect to confidential treatment. All appeals taken under this section will be considered by the General Counsel as expeditiously as circumstances permit. Although other procedures may be employed, to the extent possible, the General Counsel will decide the matter on the basis of the affidavits and other documentary evidence submitted by the interested persons and such other information as is brought to the attention of the General Counsel in accordance with the provisions of § 201.28 of this Chapter. The General Counsel shall also have the authority to enter and vacate stays under the circumstances set forth in paragraph (e)(5) of this section. In appropriate cases the General Counsel may, in his or her sole and unfettered discretion, refer appeals and questions concerning stays

under paragraph (e)(5) of this section to the Commission for decision.

(4) If it is determined that confidential treatment is not warranted with respect to all or any part of the information in question, the person requesting confidential treatment will be so informed by telephone, if possible, with a telegram or express mail letter directed to the person's last known address. Disclosure of the information under the Freedom of Information Act will occur ten calendar days after notice to the person requesting confidential treatment, subject to any stay entered pursuant to paragraph (e) (5) of this section.

(5) If within that ten calendar day period the General Counsel has been notified that the person requesting confidential treatment has commenced an action in a federal court concerning the determination to make such information publicly available, the General Counsel will stay making the public disclosure of the information pending final judicial resolution of the matter. The General Counsel may vacate a stay under this section either on his or her own motion or at the request of a person seeking access to the information under the Freedom of Information Act. If the stay is vacated, the information will be released under the Freedom of Information Act ten calendar days after the person requesting confidential treatment is notified of this action by telephone, if possible, with a telegram or express mail letter sent to the person's last known address, unless the court orders otherwise.

(f) *Initial determination that confidential treatment is warranted.* If it is determined by the Commission's Freedom of Information Act Officer that confidential treatment is warranted, the person submitting the information and the person requesting access to the information under the Freedom of Information Act will be so informed by mail. The person requesting access, pursuant to the Freedom of Information Act, will also be informed of the right to appeal the determination to the General Counsel. Any such appeal must be taken in accordance with the provisions of the Freedom of Information Act and Commission rules thereunder. See 17 CFR 200.80(d)(6).

(h) *Extensions of time limits.* Any time limit under this section may be extended, in the discretion of the Commission, the Commission's General Counsel, or the Commission's Freedom of Information Act Officer, for good cause shown.

By the Commission.
George A. Fitzsimmons,
Secretary.

April 30, 1982.

[FR Doc. 82-12967 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 200, 230, and 239

[Release No. 33-6401, IC-12423, File No. S7-909]

Automatic Effectiveness of Registration Statements Filed by Certain Unit Investment Trusts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and amendments to rule and form.

SUMMARY: The Commission today is adopting a rule which will permit most registration statements filed by unit investment trust series to become effective automatically on a date and at a time designated by the registrant, if certain conditions are met. In response to public comment, the Commission has made certain changes in the rule that should result in more series being eligible for automatic effectiveness under the rule. The Commission also is adopting certain related amendments to its Rules of Organization and Program Management and to the registration statement form for securities offered by unit investment trusts. Under the new rule, automatic effectiveness generally will be available for a registration statement filed with respect to the securities of a new series of a trust, if the registrant represents that the disclosures in the registration statement being filed do not differ in any material respect from those contained in the registration statements of one or more specifically identified previous series of the trust, except to the extent such differences are necessary to identify the specific portfolio securities of, and to provide essential financial information for, the series being registered. The amendment to the Rules of Organization and Program Management delegates to the staff the authority to suspend the operation of the automatic effectiveness provisions of the rule under circumstances specified in the rule. The amendments to the registration statement form provide a format for registrants to make the designation and the representations required for effectiveness under the rule. The Commission is taking these actions to eliminate review of registration statements of unit investment trust series that differ from one another only with respect to the specific composition

of the portfolio, and thus do not present disclosure issues that require staff review and comment prior to the effectiveness of the registration statement.

EFFECTIVE DATE: May 7, 1982.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel, (202) 272-2115, or Sandra M. Molley, Law Clerk, (202) 272-2033, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of rule 487 (17 CFR 230.487) under the Securities Act of 1933 ("1933 Act") (15 U.S.C. 77a *et seq.*) and related amendments to Form S-6 under the 1933 Act (17 CFR 239.16) and rule 30-5 of the Commission's Rules of Organization and Program Management (17 CFR 200.30-5). Under the new rule, certain 1933 Act registration statements relating to securities issued by unit investment trusts will become effective automatically, without affirmative action by the Commission or its staff. Specifically, eligible unit investment trusts that issue securities in series will be permitted to designate the date and time of effectiveness of a 1933 Act registration statement filed with respect to a series of such trust, if the registrant complies with certain conditions and makes certain representations. In order for a registration statement to be eligible for automatic effectiveness, the registrant will have to identify at least one previous series of the trust for which the effective date of the registration statement has been determined by the Commission or its staff, and represent: (a) That the securities deposited in the series being registered do not differ materially in type or quality from those deposited in such previous series; and (b) that the registration statement of the new series does not contain disclosures that differ in any material respect from those of such previous series, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the new series. The registrant will also have to represent that it has complied with rule 460 (17 CFR 230.460) under the 1933 Act, relating to circulation of preliminary prospectuses. In addition, if the registration statement of the new series or any pre-effective amendment thereto was prepared or reviewed by counsel, such counsel will have to represent that the registration statement or pre-effective amendment does not contain disclosures that will render it ineligible for automatic

effectiveness. The amendments to Form S-6 provide formats for registrants to make the designation and representations required for effectiveness under the rule.

Where the Commission finds that a registration statement filed under the rule is incomplete or inaccurate in any material respect or that the registrant has not complied the provisions of the rule, the rule provides that the ability of a unit investment trust to designate the date and time of automatic effectiveness with respect to any registration statement that has been filed but has not yet become effective, as well as with respect to any future registration statement, may be suspended upon written notice to the registrant. Any suspension will apply only to the registrant's ability to designate the date and time of effectiveness pursuant to the rule and will not otherwise affect any registration statement. The amendment to the Commission's Rules of Organization and Program Management (17 CFR 200.1 *et seq.*) delegates to the staff the authority to suspend the operation of the automatic effectiveness provisions of the rule under the circumstances described above.

When proposed, the new rule was designated 475b.¹ However, during the interim between the rule's proposal and adoption, Regulation C under the 1933 Act, of which the rule is a part, was revised.² As a result of this revision, the designation of the rule has been changed to 487.

Background

Series unit investment trusts differ in several significant respects, in both form and operation, from management investment companies that issue redeemable securities. Such trusts do not issue interests in a managed portfolio of securities, but instead, issue interests (called "units") in a portfolio of securities that is fixed at inception. Each trust may issue several series of units and each new series of units has a different portfolio. A purchaser of units in a particular series looks only to that series for his investment return. The trust (and not each series of units) is registered under the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-1 *et seq.*). However, a separate registration statement must be filed under the 1933 Act for each series issued by the trust. Under current practice, such registration statements

¹ Securities Act Release No. 8356 (October 20, 1981) (46 FR 52378, October 27, 1981).

² Securities Act Release No. 8383 (March 3, 1982) (47 FR 11819, March 19, 1982).

are reviewed by the Commission staff and become effective pursuant to section 8(a) of the 1933 Act (15 U.S.C. 77h(a)). Although a unit investment trust may issue several different types of series, which vary from one another in terms of the types of portfolio securities, the frequency and type of distributions to unitholders, and the duration of the series, most new series invest in securities that are comparable in type and quality to those invested in by at least one previous series.³ The primary difference between follow-on series and previously effective ones is in the specific composition of the portfolio and the essential financial information provided about the series.

Because of the similarities among the series issued by a unit investment trust, the process of reviewing registration statements of follow-on series is generally routine. Nevertheless, the overall process of reviewing these registration statements has become burdensome to the staff, both because of the large number of these filings and the fact that, in most instances, sponsors bring new series to market on short notice. Moreover, in some cases the review process may complicate the planning of sponsors of unit investment trusts, and, to the extent that this is true, that burden would appear unjustified, since substantive issues usually do not arise in the course of such review. For these reasons, it seemed to the Commission that in certain circumstances registration statements of unit investment trust series should be permitted to become effective without prior staff review and, therefore, in October 1981, the Commission proposed rule 487 and related amendments to Form S-6.⁴ Rule 487 was intended to eliminate review of filings which, because of their repetitive nature, do not need review, and to permit registrants to assume greater responsibility for compliance with the disclosure requirements of the 1933 and 1940 Acts. The Commission today adopts rule 487 and the related form amendments with the revisions described below.

Public Comments and Modifications to Proposed Rule 487

The comments received concerning the proposed rule unanimously favored the proposal, although most commentators suggested modifications. All comments received have been considered and the main points raised

by the commentators are addressed below.

Relationship to State Registration Procedures

Paragraph (a) of the proposed rule provided that certain registration statements filed under the 1933 Act in connection with the offering of series issued by registered unit investment trusts could become effective automatically, at the date and time designated by the registrant if the conditions specified in paragraph (b) of the proposed rule were met. The Wisconsin Commissioner of Securities suggested that the proposed rule be changed to provide that a registrant could not specify an effective date earlier than ten days from the date that an application for registration was filed in any state requiring such applications. Specifically, the commentator stated that under the "coordination" procedure of registration permitted by the Wisconsin Uniform Securities Law, registration in that state of securities issued by unit investment trusts is effected simultaneously with the effectiveness of the registrant's 1933 Act registration statement, so long as the required application for registration has been on file in the state for ten days prior to the effective date and no administrative action to deny effectiveness is pending. The commentator stated that applications for registration by unit investment trusts are always filed in Wisconsin by "coordination" and asserted that, because proposed rule 487 would allow a registration statement filed by a unit investment trust to become effective as early as the date of filing with the Commission, the proposed rule could have a negative impact on the ability of state regulators to process and review filings. The commentator further asserted that the proposed rule could foreclose the use of the coordination registration procedure permitted by Wisconsin law⁵ unless the rule were revised to provide for a mandatory delay between the filing and effective dates of registration statements.

Under the terms of rule 487 as proposed, automatic effectiveness would be available to registrants only if they complied with the conditions set forth in paragraph (b). Paragraph (b)(4) of the proposed rule provided that the registrant would be required to represent that it had complied with rule 460 under the 1933 Act (17 CFR 230.460).

Rule 460 provides, *inter alia*, that, pursuant to the statutory requirements of section 8(a) of the 1933 Act, in ruling upon requests for the acceleration of the effective date of registration statements, the Commission will consider whether issuers have taken reasonable steps to make the information contained in the registration statement conveniently available to those whom it is anticipated will participate in the distribution of the security. Rule 460 further provides that, at a minimum, each dealer and underwriter should receive, a reasonable time in advance of the anticipated effective date of the registration statement, a sufficient number of copies of the preliminary prospectus permitted by rule 430 under the 1933 Act (17 CFR 230.430) to assure adequate distribution of the preliminary prospectus.

Although no specific time periods are prescribed in rule 460, under current practice unit investment trusts usually file registration statements between ten and forty-five days before the filing of the pricing amendment. In most instances, the registration statement for a follow-on series of the trust contains the definitive prospectus of a preceding series, marked to show any changes. This "stickered" prospectus of a preceding series is used as the preliminary prospectus of the new series and is distributed to underwriters and dealers in accordance with rule 460. The pricing amendment, which is the first document in which the specific portfolio listing and other related information about the new series appears, is filed on the date that the trust sponsors request that the registration statement be declared effective.⁶

The purpose of the requirement in paragraph (b)(4) of the proposed rule was to ensure that, should rule 487 be adopted, the procedures described above would not be changed. Therefore, compliance with the terms of the rule will necessarily involve some period of delay between the filing of the registration statement and the filing of the pricing amendment to allow for circulation of the preliminary prospectus in accordance with rule 460.

⁶The sponsor of a series trust assembles the portfolio of a particular series and deposits it with a trustee. Generally, the sponsor acts as underwriter for the series and "takes down" the units of the series from the trustee. Since the public offering price of the units will vary in accordance with the market value of the portfolio securities, the sponsor-underwriter is at the risk of the market during the period between the deposit of the portfolio securities with the trustee and the completion of the offering. It is in order to minimize this exposure that sponsors want pricing amendments to become effective promptly.

³Subsequent series within each particular type—i.e., those that differ from previous series only in their specific portfolio securities—will be referred to in this release as "follow-on" series.

⁴Note 1, *supra*.

⁵Wisconsin law also permits registration by "qualification." Under this method, a registration application does not become effective until an Order of Registration is issued by the state.

Nevertheless, it is true that, under the rule, a registration statement could become effective within fewer than ten days after filing. However, the Commission believes that rule 487 would not accomplish its objectives unless registrants were afforded the flexibility to designate the date and time of effectiveness in accordance with their marketing needs. Accordingly, paragraph (a) of rule 487 has been adopted as proposed. Where compliance with applicable provisions of state law requires a specific period of delay between the filing and effective dates of a registration statement filed with the Commission pursuant to rule 487, it is the registrant's responsibility to ensure that the state requirement has been met. Rule 487 will not impede such compliance. Moreover, to the extent that the problems described by the commentator could exist under rule 487, they also could exist under the procedures which have heretofore been applicable to the processing of registration statements of unit investment trust series.

Eligible Trust Securities

As proposed, rule 487 was intended to apply only to follow-on series issued by unit investment trust bond funds. The term "unit investment trust bond fund" is not defined in the 1940 Act or the rules thereunder, but it is commonly used to refer to unit investment trusts that invest generally in municipal and corporate debt obligations. Paragraph (b)(1) of the proposed rule provided that a registrant seeking automatic effectiveness of a registration statement in accordance with paragraph (a), must be engaged exclusively in the business of investing in "eligible trust securities" as defined in rule 14a-3 under the 1940 Act (17 CFR 270.14a-3).⁷ Rule 14a-3 is one of a group of "start-up" exemptions adopted in 1979 to facilitate the organization and operation of unit investment trust,⁸ and the types of instruments included as eligible trust securities under the rule reflected administrative experience up to that time. However, several commentators suggested that the definition provided in rule 14a-3 is overly restrictive. One

commentator explained that many unit investment trusts were organized prior to 1979, when the start-up exemptions were adopted. Those unit investment trusts, at the time of their organization, obtained exemptive orders, comparable to the start-up exemptions, through applications under section 6(c) of the 1940 Act (15 U.S.C. 80a-6(c)). Such exemptive orders contain no restrictions relating to "eligible trust securities" and, accordingly, the portfolios of any trust series, where the trust relies upon an exemptive order rather than rule 14a-3, may not qualify under the rule as proposed. Two commentators noted that variable or floating rate securities, which are increasingly popular investments in the current economic climate of rapidly changing interest rates, are excluded from the definition of eligible trust securities and suggested that the rule should be revised to permit series that make such investments to use the rule.

Pursuant to paragraph (b)(3) of the proposed rule, registrants would be required to represent that the portfolio securities deposited in the new or "follow-on" series did "not differ materially in type or quality from those deposited" in a specifically identified previous series of the trust which had been reviewed by the staff. One commentator pointed out that, because of this requirement, no securities, whether they were eligible trust securities or not, could be included in the portfolio of a follow-on series without the staff having had an opportunity, in connection with its review of the specifically identified previous series, to consider any policy or disclosure issues presented by that particular type of security. The commentator contended that there is, therefore, no compelling need for the "eligible trust security" requirement in the context of rule 487 and recommended that paragraph (b)(1) be eliminated from the rule, or at least modified.

In response to these comments, the Commission has concluded that restricting the use of rule 487 to those registrants engaged exclusively in the business of investing in "eligible trust securities" as defined in rule 14a-3 is not necessary and might unduly limit use of the rule. Paragraph (b)(1) has been amended accordingly. However, to make it clear that rule 487 does not apply to registration statements filed by unit investment trusts of the type that invest in securities issued by open-end management investment companies, paragraph (b)(1) retains a restriction relating to such investments.

Reference to Previous Series

Paragraph (b)(3) of the proposed rule would require registrants to identify a previous series of the trust and to make certain representations comparing the previous series with the series being registered. Two commentators expressed the opinion that, because paragraph (b)(3) would permit the registrant to identify only one previous series of the trust for purposes of making the representations specified in paragraphs (b)(3) (i) and (ii), the proposed rule would have unduly limited applicability. In particular, the commentators were concerned about risk disclosures relating to concentrations within a trust's portfolio. In general, any concentration⁹ in the portfolio of a series of a unit investment trust is described in the prospectus relating to that series in terms of the investment risks associated with any underlying source of payment. The concentration paragraphs in the prospectus relating to a given series are dependent upon the specific composition of the portfolio of that series and, since different series may contain a number of different types of portfolio securities, not all of the prospectuses relating to series of a particular trust contain the same concentration paragraphs. One of the commentators explained that, because of the possible differences in composition of the portfolios of successive series of the trust, a sponsor often would not be able to refer to a single specific series containing identical concentrations. Both commentators recommended that rule 487 be amended either to permit reference to a number of previous series or to permit automatic effectiveness in spite of differences in concentration disclosure, provided that the staff had previously reviewed the concentration and other variable disclosure language in connection with other series issued by the trust. In response to these comments, paragraph (b)(3) has been revised to permit reference to more than one previous series.

⁷ As defined in rule 14a-3 the term "eligible trust securities" includes the following: (1) Securities, other than convertible securities, that are issued by a corporation and that have their interest or dividend rate fixed at the time they are issued; (2) interest-bearing obligations issued by a state or by any agency, instrumentality, authority or political subdivision thereof; (3) government securities; and (4) under the circumstances set forth in paragraph (b)(4)(i)(vi) of rule 14a-3, units of a previously issued series of the trust.

⁸ See Investment Company Act Release No. 10690 (May 15, 1979) (44 FR 29644, May 22, 1979).

⁹ Although the term "concentration" is not defined in the Investment Company Act or the rules thereunder, the Commission's Division of Investment Management has previously expressed the view that the term applies to the investment of more than 25% of the value of the registrant's assets in any one industry or, with respect to investment companies investing in tax-exempt bonds, in securities of issuers which are located in the same state, or the interest on which is paid from revenues of similar type projects. See Investment Company Act Release No. 9785 (May 31, 1977) (42 FR 29130, June 7, 1977).

Risk Disclosure

Under current practice, registration statements filed by unit investment trusts are reviewed by the staff and declared effective pursuant to section 8(a) of the 1933 Act. One of the premises of proposed rule 487 is that the new rule would result in the elimination of staff review of, and comment on, certain registration statements which are routine and thereby permit registrants to assume greater responsibility for their compliance with the disclosure requirements of the federal securities laws. One commentator contended that it is not uncommon during the review process for the staff to suggest additional risk disclosure relating to a particular concentration or type of security from one series to the next, even where no new legal or market developments have occurred. The commentator suggested that the proposed rule should be modified to permit post-effective adjustment, retroactive to the time of effectiveness, of risk disclosure in response to staff comment. The commentator appeared to assume that otherwise the staff would use its delegated authority under paragraph (c) of the rule to suspend the registrant's ability to use the rule.

Under the circumstances posited by the commentator, paragraph (c) would not be applicable, because the power to suspend would only exist where a registration statement was incomplete or inaccurate in a material respect. Accordingly, if the staff wishes to suggest "additional risk disclosure" in the situation described by the commentator (that is, where the particular disclosure does not differ materially from that contained in an earlier registration statement declared effective by the staff and where circumstances have not rendered that disclosure materially incomplete or inaccurate), that suggestion will be made prospectively only and not in the form of a comment on a registration statement filed under the rule. In this regard, it should be clear to registrants that the staff will not normally review and comment on such registration statements either before or after effectiveness but will perform spot check to monitor compliance with the rule.

Representation of Counsel

Paragraph (b)(6) of the proposed rule requires any counsel who prepared or reviewed a registration statement or pre-effective amendment filed pursuant to rule 487 to furnish to the Commission a written representation that such registration statement does not contain

disclosures which would render it ineligible to become effective pursuant to the rule. One commentator opposed this provision, arguing that it is justified neither by the securities statutes nor by policy considerations. The commentator contended that the registrant's full responsibility for all representations made under the proposed rule is the "proper safeguard against misrepresentations." The commentator characterized the requirements of paragraph (b)(6) as the "conscripting" of lawyers as policemen for their clients' securities disclosure, and asserted that the Commission lacked authority to impose such a requirement.¹⁰

The Commission believes that the requirement as to representations of counsel is well justified on policy grounds and is an appropriate exercise of the Commission's broad authority under the 1933 Act to adopt "such rules and regulations as may be necessary to carry out the provisions" of that Act.¹¹ The Commission has previously adopted rule 485¹² (formerly rule 465¹³) under the 1933 Act providing for the automatic effectiveness of post-effective amendments to the registration statements of open-end investment companies and unit investment trusts other than insurance company separate accounts, and has recently proposed a similar rule covering such separate accounts.¹⁴ Both rule 485 and the proposed rule for separate accounts contain provisions as to representations of counsel similar to the one in rule 487. These automatic effectiveness rules represent a significant departure from traditional practice in that rules of general applicability replace individual determinations by the staff or the Commission as to whether the statutory criteria for effectiveness have been

met.¹⁵ Accordingly, it is important that the automatic effectiveness rules contain provisions designed to provide reasonable assurance that the applicable statutory standards are satisfied. The Commission believes that, where a registration statement filed pursuant to rule 487 was prepared by counsel, a specific statement by counsel that the registration statement meets the rule's requirements for effectiveness without staff review will serve as an important safeguard against the improper filing of amendments pursuant to the rule. The Commission's experience to date with rule 485(b), which has been in effect since October, 1980, confirms that the requirement of a representation of counsel is both useful and workable.

At the same time, it is important to note that the Commission does not agree with the argument that the requirement of a representation of counsel constitutes a "conscripting" of counsel. First, counsel may refrain from making the representation without substantially prejudicing its clients' interests. A decision by counsel not to make the representation does not imply that the client is failing to make proper disclosure or is otherwise violating the law. The only effect of the absence of the representation, where the filing was prepared or reviewed by counsel, will be to cause the registration statement to be processed in what heretofore has been the usual manner, as if rule 487 did not exist. If counsel cannot be confident that the requirements of rule 487 have been met in the case of a particular filing, it would seem both reasonable and in the best interest of the registrant not to apply the rule with respect to that filing. In addition to the foregoing, the scope of the representation counsel is required to make is relatively limited. Counsel is not held responsible under the rule for the accuracy or completeness of the facts contained in the registration statement; nor is an opinion of counsel required. All that is called for is representation to the Commission, based on the four corners of the document, that there are no disclosures that render the registration statement ineligible for filing under the rule.

Filing Procedures Under Rule 487

The adoption of rule 487 represents a significant departure from the

¹⁰ The commentator referred to certain language in *SEC v. Arthur Young & Co.*, 590 F.2d 785 (9th Cir. 1979), a Commission enforcement proceeding. However, the commentator did not contend that the holding in that case is controlling here, and the relevance of that case to the Commission's rulemaking authority is not apparent.

¹¹ Under section 19(a) of the 1933 Act (15 U.S.C. 77s(a)) the Commission is authorized to "make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers * * * [and] * * * to prescribe the form or forms in which required information shall be set forth."

¹² Rule 485 was adopted in Securities Act Release No. 6229 (August 25, 1980) (45 FR 57702, August 29, 1980).

¹³ See Securities Act Release No. 6383, note 2, *supra*.

¹⁴ Securities Act Release No. 6376 (January 11, 1981) (47 FR 3130, January 22, 1981). The proposed automatic effectiveness rule for separate accounts is designated 486 but, if adopted, will be redesignated in light of the recent amendments to Regulation C under the 1933 Act.

¹⁵ Section 8(a) of the 1933 Act sets forth certain standards that must be met before the effectiveness of an initial 1933 Act registration statement may be accelerated, and section 8(c) of the 1933 Act establishes criteria for when a post-effective amendment may be declared effective.

procedures which heretofore have been applicable to the review and processing of registration statements filed by unit investment trust registrants, and the Commission wishes to bring certain matters to the attention of registrants.

First, under rule 487, the staff will no longer prepare notifications of effectiveness for registration statements that become effective automatically under the rule. Registrants must take into account whatever time might be required for the registration statement or pre-effective amendment to be delivered to the Commission, and take care that the date and time specified for effectiveness is no earlier than the date and time of filing. Rule 456 under the 1933 Act (17 CFR 230.456) states that the date on which any papers are actually received by the Commission shall be the date of filing. Of course, notwithstanding any designation by the registrant, a registration statement may not become effective until the date and time that it is filed with the Commission.

Second, to facilitate implementation of the rule, the Commission is amending the facing sheet and signature page of Form S-6, the registration statement form under the 1933 Act for securities of unit investment trusts. The facing sheet is amended to provide a format for registrants to make the designation required by paragraph (a)(1) of rule 487 which is a condition to effectiveness under the rule. Similarly, the signature page is being amended to provide a format for registrants to make the representations required by paragraphs (b)(3) and (b)(4) of the proposed rule.

Registrants are reminded that, under rule 487, the statutory burden of full disclosure is on the issuer, its affiliates, its underwriter, its accountants, and others responsible for the filing. As a matter of law, this burden cannot be shifted to the Commission or its staff. To monitor compliance with these statutory responsibilities, the Commission staff will undertake a program of spot-checking registration statements and pre-effective amendments filed under the rule.

Delegation of Authority

As stated in the release proposing rule 487, the Commission is adopting an amendment to rule 30-5 of its Rules of Organization and Program Management (17 CFR 200.30-5), delegating to the Director of the Division of Investment Management the authority to suspend the operation of paragraph (a) of rule 487 under the circumstances set forth in paragraph (c) of the rule.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

17 CFR Parts 230 and 239

Reporting requirements, Securities.

Text of Rule 487, Amendments to Form S-6, and Amendment to Rule 30-5

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

I. Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 230.487 to read as follows:

§ 230.487 Effectiveness of registration statements filed by certain unit investment trusts.

(a)(1) A unit investment trust registered under the Investment Company Act of 1940 that files a registration statement pursuant to the Act in connection with the offering of the securities of a series of the unit investment trust, except the first series of such trust, may designate a date and time for such registration statement to become effective. If the registrant complies with the conditions set forth in paragraph (b) of this section, the registration statement shall become effective in accordance with such designation.

(2) The registrant may designate the date and time of effectiveness in the registration statement or in any pre-effective amendment thereto. A pre-effective amendment to a registration statement with respect to which such a designation is properly made shall be deemed to have been filed with the consent of the Commission and shall accordingly be treated as part of the registration statement.

(b) Availability of effectiveness of a registration statement in accordance with paragraph (a) of this section is conditioned upon compliance with the following:

(1) The registrant is not engaged in the business of investing in securities issued by one or more open-end management investment companies;

(2) The designation provided for in paragraph (a) of this section is set forth on the facing sheet of such registration statement or a pre-effective amendment thereto;

(3) The registrant identifies one or more previous series of the trust for which the effective date of the registration statement was determined by the Commission or its staff, and makes the following representations:

(i) That the portfolio securities deposited in the series with respect to

which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in such previous series identified by the registrant; and

(ii) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment thereto is being filed, the registration statement or pre-effective amendment thereto does not contain disclosures that differ in any material respect from those contained in the registration statement of such previous series identified by the registrant;

(4) The registrant represents that it has complied with rule 460 under the Act (17 CFR 230.460);

(5) The identification and representations provided for in paragraphs (b)(3) and (b)(4) of this section are made on the signature page of the registration statement or a pre-effective amendment thereto; and

(6) If counsel prepared or reviewed such registration statement or a pre-effective amendment thereto, such counsel shall furnish to the Commission at the time the registration statement or pre-effective amendment thereto is filed a written representation that such registration statement or pre-effective amendment does not contain disclosures which would render such registration statement ineligible to become effective pursuant to paragraph (a) of this section.

(c)(1) The Commission may, in the manner and under the circumstances set forth in paragraph (c)(2) of this section, suspend the ability of a unit investment trust to designate the date and time of effectiveness of series of such trust, and such suspension shall remain in effect until the Commission furnishes written notice to the sponsor of the unit investment trust that the suspension has been terminated. Any suspension, so long as it is in effect, shall apply to any registration statement that has been filed but has not, at the time of such suspension, become effective, and to any registration statement with respect to any series of such trust that may be filed after such suspension. Any such suspension shall apply only to the ability to designate the date and time of effectiveness pursuant to paragraph (a) hereof and shall not otherwise affect any registration statement.

(2) Any suspension pursuant to paragraph (c)(1) of this section shall become effective at such time as the Commission furnishes written notice thereof to the sponsor of the unit investment trust. The Commission may

issue such a suspension if it appears to the Commission that any registration statement containing a designation pursuant to this section is incomplete or inaccurate in any material respect, whether or not such registration statement has become effective, or that the registrant has not complied with the conditions of this section. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

II. Part 239 of Chapter II of Title 17 of the Code of Federal Regulations is amended by:

1. Amending the facing sheet of Form S-6; and
2. Amending the signature page of Form S-6 as follows:

§ 239.16 Form S-6, for unit investment trusts registered on Form N-8B-2.

1. Amendment to facing sheet. Insert the following after "Approximate date of proposed public offering":
☐ Check box if it is proposed that this filing will become effective on (date) at (time) pursuant to Rule 487.
2. Amendment to signature page. Insert the following after the first textual paragraph under "SIGNATURES":

Alternative Form of Signature for Filings Under Rule 487

The registrant, * * *, hereby identifies series (number(s) and type) of the trust for purposes of the representations required by rule 487 and represents the following:

- (1) That the portfolio securities deposited in the series as to the securities of which this registration statement is being filed do not differ materially in type or quality from those deposited in such previous series;
 - (2) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to the securities of which this registration statement is being filed, this registration statement does not contain disclosures that differ in any material respect from those contained in the registration statement(s) for such previous series as to which the effective date was determined by the Commission or the staff; and
 - (3) That it has complied with rule 460 under the Securities Act of 1933.
- Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be

signed on its behalf by the undersigned thereunto duly authorized, and its seal to be hereunto affixed and attested, all in the city of _____, and State of _____, on the day of _____, 19____.

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

Subpart A—Organization and Program Management

III. Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By amending § 200.30-5 by adding paragraph (b-3) to read as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

(b-3) With respect to registration statements filed pursuant to paragraph (a) of rule 487 under the Act (17 CFR 230.487(a)):

- (1) To suspend the operation of said paragraph (a) and to issue written notices to registrants of such suspensions.

Statutory Authority, Effective Date

The Commission hereby adopts rule 487 and amendments to Form S-6 pursuant to the provisions of 7, 8 and 19(a) of the Securities Act of 1933 (15 U.S.C. 77g, 77h and 77s(a)). It finds that any changes in the rule from the proposal published in Securities Act Release No. 6356 have already been generally subject to comment and pertain to matters of form or are less burdensome than those proposed. Further notice and rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) are, therefore, unnecessary. Further, the Commission hereby amends rule 30-5 pursuant to authority contained in the Act of August 30, 1962, Pub. L. 87-592, 76 Stat. 394 (15 U.S.C. 78d-1, 78d-2) and Section 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-37). These actions are effective immediately pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(1)).

By the Commission,
 George A. Fitzsimmons,
 Secretary.

May 7, 1982.

[FR Doc. 82-12968 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM81-7]

18 CFR Part 4

Exemption From the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or less; Correction

Issued: May 4, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: On January 19, 1982, the Federal Energy Regulatory Commission issued a Final Rule and Additional Notice of Finding of No Significant Impacts in Docket No. RM81-7 implementing "Exemption from the Licensing Requirements of Part I of the Federal Power Act of Certain Categories of Small Hydroelectric Power Projects With an Installed Capacity of 5 Megawatts or less." (47 FR 4232, January 29, 1982).

This document corrects an unintentional omission.

FOR FURTHER INFORMATION CONTACT: James Hoecker, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

§§ 4.112, 4.113 [Corrected]

In §§ 4.112(b)(2) and 4.113(b)(2), shown at 47 FR 4245 and 4246 respectively, following "U.S. Fish and Wildlife Service", insert ", National Marine Fisheries Service,".

In §§ 4.112(c)(5)(ii) and 4.113(c)(5)(ii) shown at 47 FR 4245 and 4246 respectively, following the phrase "[identify which office]", insert ", National Marine Fisheries Service,".
 Kenneth F. Plumb,
 Secretary.

[FR Doc. 82-12832 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 294

[Docket No. RM79-52-000]

Interim Procedures for Shortages of Electric Energy and Capacity Under Section 206 of the Public Utility Regulatory Policies Act of 1978 Extension of Interim Rule

Issued: May 5, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Extension of interim rule.

SUMMARY: The Federal Energy Regulatory Commission amends its rules to extend, through a period ending April 30, 1983, the interim rule implementing reporting procedures for shortages of electric energy and capacity, under section 206 of the Public Utility Regulatory Policies Act of 1978. Under the rule, each public utility now serving firm power wholesale customers must report to the Commission, the utility's customers, and appropriate State authorities, any shortages of electric energy or capacity anticipated to occur prior to April 30, 1983. Also, the rule requires each public utility to report any modifications of its plans for accommodating shortages which may occur before April 30, 1983.

EFFECTIVE DATE: May 5, 1982.

FOR FURTHER INFORMATION CONTACT:

Bernard B. Chew, Office of Electric Power Regulation, 825 North Capitol Street, NE., Room 504RB, Washington, D.C. 20426 (202) 357-9264;

Kenneth J. Malloy, Rulemaking and Legislative Analysis Section, Office of General Counsel, 825 North Capitol Street, NE., Room 8602-A, Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

The Federal Energy Regulatory Commission (Commission) is amending § 294.101 of its regulations (18 CFR 294.101), an interim rule which requires electric utilities to report to the Commission anticipated shortages of electric energy and capacity as required by section 206 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The amendment extends the effectiveness of the rule through April 30, 1983.

I. Discussion

Section 206 of PURPA amended the Federal Power Act by adding a new subsection (g) to section 202, under which the Commission is, by rule, to require that each public utility (1) provide prompt notice to the Commission and the appropriate state regulatory authority of any anticipated

shortages of electric energy or capacity which would affect the utility's capability of serving its wholesale customers, (2) prepare and submit to the Commission and to any appropriate state regulatory authority contingency plans that would outline what circumstances might give rise to such shortages, and (3) accommodate such shortages while giving due consideration to the public health, safety, and welfare, and assuring that all persons served directly and indirectly are treated without undue prejudice or disadvantage.

On June 15, 1979, the Commission issued, on an interim basis, 18 CFR 294.101 to implement section 206 of PURPA.¹ The Commission also issued a Notice of Inquiry requesting comments on various issues relating to the implementation of section 206 of PURPA.²

The interim rule requires, in paragraph (b), that each public utility serving firm power wholesale customers to submit by July 23, 1979, "a brief statement indicating how it would accommodate any shortages of electric energy or capacity affecting its firm power customers, if such shortages were to occur prior to September 30, 1979."³

Paragraph (c) of the interim rule requires each utility to report immediately any shortage of electric energy or capacity which the utility anticipates will occur. In that report the utility must provide the Commission with certain information, including information regarding any procedures for accommodating a particular shortage, if they differ from the procedures set out in the utility's statement submitted pursuant to paragraph (b) of the interim rule.

II. Revision to Interim Rule

Prior to this amendment, paragraph (a) defined "anticipated shortages of electric capacity or energy" as those situations which would result in

¹ Interim Regulations, 18 CFR 294.101 (1979), Docket No. RM79-52 (issued June 15, 1979).

² Inquiry Implementing Section 206 of the Public Utility Regulatory Policies Act of 1978, Continuance of Service, Docket No. RM79-52, (issued April 22, 1980), 45 FR 28,162 (April 28, 1980). The Commission staff is reviewing the comments received in order to determine whether there are additional appropriate means of implementing section 206 of PURPA.

³ This language was adopted by an Amendment to Interim Regulations, Docket No. RM79-52 (issued August 1, 1979), 44 FR 46,455 (August 8, 1979), in order to make clear the Commission's intent that all public utilities serving firm customers must submit statements concerning the methods by which they accommodate possible shortages. Before this amendment, the language appeared to suggest that only those utilities which anticipated shortages prior to September 30, 1979, were obliged to file accommodation reports under section 206(a) of PURPA.

shortages "anticipated to occur prior to April 30, 1982." "This amendment will extend the definition to cover shortages anticipated to occur prior to April 30, 1983, so that the Commission will be advised of any anticipated shortages which may occur during the coming year. Accordingly, the Commission is amending the interim rule.

Additionally, the interim rule is amended to extend to April 30, 1983, the requirement of paragraph (c) that a utility file a supplemental statement setting forth changes in the contingency plan on file with the Commission. A utility need not file a statement of its plan to accommodate shortages prior to April 30, 1983, if that plan does not vary from that set out in the statement already filed pursuant to paragraph (b).

III. Effective Date

Since the Commission is required by statute to have rules in effect regarding the continuance of electric service, good cause exists to make this amendment effective immediately and to do so without prior notice and comment under 5 U.S.C. 553(b).

List of Subjects in 18 CFR Part 294

Electric utilities, Reporting requirements.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 (1978); Federal Power Act (16 U.S.C. 792-828c))

In consideration of the foregoing, Part 294 of Chapter I, Title 18 of the Code of Federal Regulations, is amended as set forth below, May 5, 1982.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 294—INTERIM PROCEDURES FOR SHORTAGES OF ELECTRIC ENERGY AND CAPACITY UNDER SECTION 206 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

§ 294.101 [Amended]

1. Section 294.101 is amended in paragraphs (a)(1), (a)(2), and (b)(4) to remove the date "1982" each time it appears and to insert in lieu thereof the date "1983".

2. Section 294.101 is further amended by adding parenthetically immediately

⁴ This date was initially September 30, 1978, but was extended to April 30, 1980, by Interim Regulations, Docket No. RM79-52 (issued Oct. 23, 1979), 44 FR 61,953 (Oct. 29, 1979). It was extended to April 30, 1981, by Amendment to Extend Interim Regulations, Docket No. RM79-52 (issued April 1, 1980), 45 FR 23,684 (April 8, 1980), and to April 30, 1982, by Amendment to Extend Interim Regulations, Docket No. RM79-52 (issued April 23, 1981), 46 FR 24,550 (May 1, 1981).

following the text of the section the following statement:

(The reporting requirements contained in this section are not subject to OMB approval under section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3501-3520.)

[FR Doc. 82-12971 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 1H5289/T83; PH FRL 2120-5]

Methamidophos; Tolerances for Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation to permit residues of the insecticide methamidophos in or on safflower meal resulting from its use in a proposed experimental program involving application of the insecticide on the growing crop safflower. This regulation, to permit the marketing of the commodity while further data on methamidophos are being collected, was requested by Chevron Chemical Co.

EFFECTIVE DATE: May 12, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211 CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of April 22, 1981 (46 FR 22983) which announced that Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, had submitted a feed additive petition (FAP 1H5289) proposing that 21 CFR Part 561 be amended by the establishment of a regulation permitting the residues of the insecticide methamidophos (*O,S*-dimethyl phosphoramidothioate) in or on the feed commodity safflower meal at 0.6 part per million (ppm) resulting from its use in a proposed experimental program involving application of the insecticide to the growing crop safflower.

There were no comments received in response to this notice of filing.

The scientific data submitted and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being concurrently issued under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

The toxicology data considered in support of the regulation were acute oral LD₅₀ studies on the rat and mouse; an acute dermal LD₅₀ study on the rabbit; an acute inhalation LC₅₀ and cholinesterase activity study on the rat; a primary eye irritation study on the rabbit; 90-day rat and dog feeding studies; a teratology study (rabbit); an acute delayed neurotoxicity (hen) study; and an interim report of an oncogenic study (mouse).

Desirable data that are currently lacking and the projected dates of completion of these studies are as follows: a chronic feeding/oncogenic study (rat)—August 1984; the final report of the oncogenic study (mouse)—January 1983; a teratology study (rat)—October 1982; a reproduction study (rat)—June 1984; and mutagenic study (dominant lethal)—November 1982.

Although there are significant data gaps for the chemical, the available toxicity data are adequate to support the proposed temporary tolerance because the proposed experimental use will not significantly increase the current theoretical maximum residue contribution (TMRC) to the human diet. The TMRC from this use would be less than 0.003 percent (0.000045 milligram (mg) per day). No detectable residues (less than 0.01 ppm) were found in the refined safflower oil. A related document establishing a temporary tolerance for residues of the insecticide in or on safflower seed at 0.3 ppm appears elsewhere in this issue of the Federal Register.

The currently established tolerances for the combined residues of acephate and methamidophos in meat, milk, poultry, and eggs are adequate to cover any secondary residues of methamidophos in meat, milk, poultry, and eggs resulting from the proposed experimental use on safflower.

The metabolism of the insecticide is adequately understood and an adequate analytical method (gas chromatography equipped with a cesium bromide thermionic detector) is available for enforcement purposes. There are presently no actions pending against continued registration of this chemical.

Based on the above information considered by the Agency, it is concluded that the pesticide may be safely used in accordance with the

prescribed manner when such uses are in accordance with the label and labeling registered pursuant to FIFRA, as amended, (86 Stat. 973; 89 Stat. 751; U.S.C. 136(a) *et seq.*). Therefore, 21 CFR Part 561 is amended as set forth below.

Any person adversely affected by this regulation may, on or before June 11, 1982, file written objections with the Hearing Clerk (A-101), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

Effective on: May 12, 1982.

List of Subjects in 21 CFR Part 561

Animal feeds, Pesticides and pests.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

Dated: April 27, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Therefore, 21 CFR Part 561 is amended by adding a new § 561.277 to read as follows:

§ 561.277 Methamidophos.

(a) A feed additive regulation is established for residues of the insecticide methamidophos (*O,S*-dimethyl phosphoramidothioate) to read as follows:

Feed	Parts per million	Company	Expiration date
Safflower meal.....	0.6	Chevron Chemical.	Aug. 31, 1982

(b) Residues not in excess of the tolerance limitation indicated above resulting from the use of the insecticide remaining after the expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and feed additive tolerance.

(c) The company shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 82-12530 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 120

[Docket No. R-82-959]

Community Housing Resource Board Program; Disbursement of Funds

AGENCY: Office of the Assistant Secretary of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of effective date for interim rule.

SUMMARY: This document announces the effective date for the interim rule published in the *Federal Register* on March 25, 1982 (47 FR 12926) which governed the disbursement of funds to Community Housing Resource Boards to carry out activities that would enhance the effectiveness of the Voluntary Affirmative Marketing Agreements Program. The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, subject to waiver, and announced that future notice of the effectiveness of the rule would be published in the *Federal Register*.

Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published March 25, 1982, 47 FR 12926, is May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Lasner, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 5218, 451 7th Street, S.W., Washington, D.C. 20410, Telephone No. (202) 755-6207. This is not a toll-free number.

Dated: May 6, 1982.

Richard Lasner,

Assistant General Counsel for Regulations.

[FR Doc. 82-12736 Filed 5-11-82; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-101; Ref: Notice No. 369]

Edna Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule. Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Luis Obispo County, California, to be named "Edna Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Edna Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4 allowing the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region

distinguishable by geographic characteristics. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Edna Valley Vineyard, Paragon Vineyard Co., Inc., Chamisal Vineyard, Lawrence Winery, and MacGregor Vineyards petitioned ATF to establish a viticultural area in San Luis Obispo County, California, to be named "Edna Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 369, in the *Federal Register* on April 9, 1981 (46 FR 21195), proposing the establishment of the Edna Valley viticultural area.

Comments

Ten comments were received during the comment period. Six of the comments were from wineries and vineyards located in Edna Valley. The remaining four comments were from a wine consumer, a farm advisor at the University of California, a consulting enologist in the state of California, and a Chairman of the Board of a vineyard located outside of Edna Valley. All ten comments were in full support of the petition. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Edna Valley, was well documented in the petition. The valley derives its name from the small community of Edna founded about 1883. The name "Edna" was first used in a recorded lease document in 1899. Over the ensuing years the valley became locally known as Edna Valley. After evaluating the petition and the comments received, ATF believes that the Edna Valley viticultural area has a unique historical identity and that the name "Edna Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition and attached documents show that Edna Valley is a natural, elongated valley consisting of approximately 35 square miles. It is oriented along a northwest-southeast axis and is well defined by the Santa Lucia Mountains on the northeast side; by a low, hilly complex on the southeast; and by the San Luis Range on

the southwest. The upper end or northwest border merges into the Los Osos Valley just beyond the city of San Luis Obispo. The inland areas of San Luis Obispo County generally experience substantially higher summer temperatures and substantially lower winter temperatures than Edna Valley. This is because of the mountain barrier which runs along the San Luis Obispo County coastline, shielding the inland areas from the moderating ocean influences. In Edna Valley, killing frosts are rare which is not the case in other inland areas of the county that are denied the benefits of the ocean influence by the mountain barrier.

There is a gap in this mountain barrier where the Los Osos Valley meets the ocean in the Morro Bay area, 15 miles to the northwest of Edna Valley. Los Osos Valley serves as a wide mouthed funnel, providing an unobstructed sweep from the ocean into Edna Valley, bringing frequent morning fog during the summer months and winds in the afternoon. The pocket of hills and mountains surrounding Edna Valley captures the marine air, tempered by distance from the coastline, flowing in from Morro Bay through the Los Osos Valley, creating climatic conditions which differentiate Edna Valley from the surrounding areas. Although Los Osos Valley to the northwest is also a distinguishable valley, its proximity to the ocean causes its climate to be colder with more fog and wind than Edna Valley.

The floor of Edna Valley is approximately 120 to 300 feet above sea level. The viticultural area projects into the surrounding uplands to the 600-foot contour line of the Santa Lucia Mountains and to the 400-foot contour line of the San Luis Range on the west. The elevations of the surrounding mountainous areas generally range between 1000 to 2400 feet to the northwest, 600 to 1600 feet to the southeast, and 400 to 900 feet to the south and west. Major soils within the Edna Valley viticultural area are generally sandy clay loam, clay loam or clay. They are mostly hard, firm, sticky and plastic. They are also generally neutral to moderately alkaline. Most soils are calcareous at some level of the surface soil or subsoil. Soils in the surrounding mountainous areas above the 400 to 600-foot contour levels are shallower than in the valley and are of poor soil capability. Soils in Los Osos Valley are similar to those in Edna Valley but are generally heavier and of better capability.

After evaluating the petition and comments, ATF has determined that due to the topographic and climatic features of Edna Valley, it is distinguishable from the surrounding areas.

Boundaries

The boundaries proposed by the petitioner are adopted. The boundaries for the viticultural area are essentially the same as those for Edna Valley except that the viticultural area boundaries omit the hilly and mountainous areas (above the 400-foot contour line on the southwest side of the valley and above the 600-foot contour line on the northeast side) where slopes are too steep and soil capabilities are not suitable for grape-growing.

Miscellaneous

ATF does not wish to give the impression by approving the Edna Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantages gained can only come from consumer acceptance of Edna Valley wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and the comments received is available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure; 12th and Pennsylvania Avenue, NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Part 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.35. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.	
* * * * *	
9.35	Edna Valley.
* * * * *	

Part 2. Subpart C is amended by adding § 9.35. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *
§ 9.35 Edna Valley.

(a) *Name.* The name of the viticultural area described in this section is "Edna Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Edna Valley viticultural area for four U.S.G.S. maps. They are titled:

- (1) "San Luis Obispo Quadrangle, California—San Luis Obispo Co.," 7.5 minute series;
- (2) "Lopez Mtn. Quadrangle, California—San Luis Obispo Co.," 7.5 minute series;

(3) "Pismo Beach Quadrangle, California—San Luis Obispo Co.," minute series; and

(4) "Arroyo Grande NE Quadrangle, California—San Luis Obispo Co.," 7.5 minute series.

(c) **Boundaries.** The Edna Valley viticultural area is located in San Luis Obispo County, California. The beginning point is Cuesta Canyon County Park, located on U.S.G.S. map "San Luis Obispo Quadrangle" at the north end of Section 25, Township 30 South, Range 12 East.

(1) From the beginning point, the boundary runs southwesterly along San Luis Obispo Creek to a point .7 mile southerly of the confluence with Davenport Creek;

(2) Thence due east to the intersection with the 400-foot contour line of the northeastern flank of the San Luis Range;

(3) Thence in a generally easterly and then a southeasterly direction along this 400-foot contour line of the northeastern flank of the San Luis Range, which forms the southwestern rim of Edna Valley, to the township line identified as "T31S/T32S" on the U.S.G.S. map;

(4) Thence east along township line "T31S/T32S", across Price Canyon to Tiber;

(5) Thence in a generally easterly direction along the 400-foot contour line of Tiber Canyon and the southern rim of Canada Verde, crossing Corbit Canyon Road and continuing along the 400-foot contour line to longitude line 120°32'30";

(6) Thence north along longitude line 120°32'30" to the 600-foot contour line of the southwestern flank of the Santa Lucia Mountain Range;

(7) Thence in a generally northwesterly direction along the 600-foot contour line of the southwestern flank of the Santa Lucia Range to Cuesta Canyon County Park, the beginning point.

Signed: March 25, 1982.

G. R. Dickerson,
Director.

Approved: April 12, 1982.

John M. Walker, Jr.,
Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12802 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[T.D. ATF-102; Ref: Notice No. 381]

Lancaster Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a

viticultural area in Lancaster and Chester Counties, Pennsylvania, to be named "Lancaster Valley." This final rule is the result of a petition submitted by Mr. R. Martin Keen, proprietor of Conestoga Vineyards in Lancaster, Pennsylvania. The Bureau of Alcohol, Tobacco and Firearms believes the establishment of Lancaster Valley as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wines they purchase.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape growing region as an American viticultural area.

ATF was petitioned to establish a viticultural area in eastern Pennsylvania to be named "Lancaster Valley." In response to this petition, ATF published a Notice of Proposed Rulemaking, No. 381, in the *Federal Register* on August 28, 1981, (46 FR 43468), proposing the establishment of the "Lancaster Valley" viticultural area.

Comments

Only one comment was received in response to the notice of proposed rulemaking. The petitioner, R. Martin Keen of Conestoga Vineyards, submitted a comment in support of the notice of proposed rulemaking. The petitioner also suggested minor clarifications in the boundaries of the proposed viticultural area.

Historical and Current Evidence of the Name

The name Lancaster Valley was documented in the petition as being long associated with the proposed area in eastern Pennsylvania. The viticultural area is located almost entirely within Lancaster County, and Lancaster is the

largest and most important city within the area. Lancaster Valley is the name used by the Pennsylvania and United States Geologic Surveys to describe the region in the viticultural area.

Although Lancaster County was one area in which wine grapes were cultivated in the early part of the 19th Century, the area has not been known as a wine producing area until quite recently. Since the early 1970s, two wineries have been bonded within the Lancaster Valley and there are now approximately 41.5 acres of wine grapes in cultivation. ATF, therefore, believes that the historical and current evidence supports the viticultural area as a distinct grape-growing area.

Geographic Evidence

The petition established the Lancaster Valley viticultural area as a distinctive grape-growing region distinguished from surrounding areas on the basis of soil, topography and geology.

Lancaster Valley is located in the Lancaster-Frederic Lowland. Its topography is a nearly level valley, averaging 400 feet in elevation and decreasing in elevation from an average of 500 feet at its eastern edge to 300 feet at its western edge along the Susquehanna River. The valley is over 30 miles long, 12 miles wide and encompasses approximately 225,000 acres. Lancaster Valley is bounded on the north, east and south by areas of higher elevation ranging from 100 to 600 feet above the valley floor, and on the west by the Susquehanna River.

Soils found within the Lancaster Valley are typical of those derived from limestone, and include Conestoga, Beekmantown, Conococheague and Elbrook Limestones, and Ledger and Vintage dolomites. These soils are deep, well drained, hold moisture well, and are highly productive. They contrast sharply with soils found in the hills and upland areas surrounding the Lancaster Valley. Generally, the surrounding soils are composed of harder rocks (quartzite, schist, gneiss, etc.) which are more resistant to erosion and less fertile than the limestone soils found within the Lancaster Valley. The deep fertile soils of the valley were formed from the insoluble and weathered products left from the decay of the parent limestones.

Climate is not a factor in differentiating the Lancaster Valley viticultural area from surrounding areas.

Based on the information contained in the petition pertaining to the geographical features, ATF has determined that this area is distinguishable from the surrounding area.

Boundaries

The boundaries, as proposed, consist of a combination of natural and man-made features. As proposed, the Lancaster Valley would consist of that area delineated on the east by the 500 foot contour line and the Welsh Mountains. The southern boundary includes the 500 foot contour line extending along Mine Ridge to the 76° 07' 30" line of longitude. From there the boundary passes in approximately a straight line south of Strasburg and Willow Street to the confluence of Stehman Run and the Conestoga River. The boundary continues along Indian Run and Wisslers Run to the 300 foot contour line. The western boundary consists of the 300 foot contour line above the Susquehanna River, Pennsylvania Highway 441 between Marietta and Bainbridge, but excludes the Manor Hills, Chestnut Hills, Chestnut Ridge, and the Chickies Ridge. The northern boundary is an irregular line extending from Bainbridge to Rheims, which then passes north of Mount Joy and south of Manheim, Lititz, Akron, Ephrata and Terre Hill to the intersection with Berks County at Pennsylvania Highway 23.

The petitioner supported the proposed boundaries but suggested minor clarifications in two of them. The petitioner suggested that proposed §§ 9.41(c) (25) and (26) be combined in one paragraph to read "then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23." This language appears as § 9.41(c)(25). The second suggestion was to combine proposed §§ 9.41(c) (31), (32), and (33) into two paragraphs to read "then east in a straight line for approximately 3.8 miles to the Erismans Church," and "then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View." Combining these paragraphs also allows deletion of the reference in proposed §§ 9.41(c) (31) and (32) to the intersection of Pennsylvania Highways 283 and 141. Highway 141 does not extend east of Mt. Joy to intersect with Highway 283. Therefore, the petitioner's recommended changes are adopted since the two new paragraphs, §§ 9.41(c) (30) and (31) are clearer and more accurate. Neither of these changes materially affects the boundaries of the viticultural area.

Miscellaneous

ATF is approving this area as being viticulturally distinct from surrounding areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements

as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Lancaster Valley wines.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal author of this final rule is Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Wine, Viticultural areas.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.41. As amended, the table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural areas

Sec.

* * * * *

9.41 Lancaster Valley.

* * * * *

Paragraph 2. Subpart C is amended by adding § 9.41. As added, § 9.41 reads as follows:

§ 9.41 Lancaster Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lancaster Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lancaster Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Lancaster County, Pennsylvania", scaled 1:50,000, edition of 1977; and

(2) "Honey Brook Quadrangle", 7.5 minute series, edition of 1955, photorevised 1969 and 1974.

(c) *Boundaries.* The Lancaster Valley viticultural area is located in Lancaster County and Chester County, Pennsylvania. The beginning point is where Pennsylvania Highway 23 crosses the Lancaster and Berks County boundary.

(1) Then in a southeasterly direction following the Lancaster County boundary for approximately 0.9 mile to the 500 foot contour line immediately south of the Conestoga River.

(2) Then following the 500 foot contour in a southwesterly direction to the Caernarvon-East Earl Township boundary.

(3) Then south approximately 0.1 mile following the Caernarvon-East Earl Township boundary to U.S. Highway 322.

(4) Then west following U.S. Highway 322 for approximately 1.7 miles to the electric transmission line between Fetterville and Cedar Grove School.

(5) Then southwest in a straight line for approximately 5.2 miles to the intersection of Earl, Upper Leacock, and Leacock Townships at the Mill Creek.

(6) Then southeast following the boundary between Earl Township and Leacock Township to the point where Earl, East Earl, Salisbury, and Leacock Townships intersect.

(7) Then east in a straight line for approximately 4.8 miles to the point where the 500 foot contour line intersects Pequea Creek northwest of Mt. Pleasant School.

(8) Then following the 500 foot contour line past Cole Hill through the town of Gap and along Mine Ridge to the 76° 07' 30" west longitude line in Paradise Township.

(9) Then southwest in a straight line for approximately 7.7 miles to the Boehm Church south of Willow Street.

(10) The northwest in a straight line for approximately 1.2 miles to the township school in West Willow.

(11) Then west in a straight line for 4.2 miles to the confluence of Stehman Run and the Conestoga River.

(12) Then northwest in a straight line for approximately 0.5 mile to the confluence of Indian Run and Little Conestoga Creek.

(13) Then west following Indian Run for approximately 3.6 miles to the source of the more northerly branch.

(14) Then northwest in a straight line for approximately 0.25 mile to the source of Wisslers Run.

(15) Then west following Wisslers Run downstream for approximately 0.7 mile to the 300 foot contour line.

(16) Then north following the 300 foot contour line to its intersection with Pennsylvania Highway 999 in Washington Boro.

(17) Then east following Pennsylvania Highway 999 to the school in Central Manor.

(18) Then northeast in a straight line for approximately 2.7 miles to the point where the West Branch of the Little Conestoga Creek intersects with Pennsylvania Highway 462.

(19) Then west following Pennsylvania Highway 462 for approximately 1.5 miles to Strickler Run.

(20) Then following Strickler Run southwest to the Columbia municipal boundary.

(21) Then north following the eastern boundary of Columbia to Shawnee Run.

(22) Then northeast in a straight line for approximately 5.8 miles to the intersection of Pennsylvania Highway 23 and Running Pump Road [unnamed on map] at elevation check point 436 near Centerville.

(23) Then east following Pennsylvania Highway 23 for approximately 0.5 mile to the 400 foot contour line.

(24) Then following the 400 foot contour line north around Chestnut Ridge, past Millers Run and continuing until the 400 foot contour line intersects an unnamed stream.

(25) Then due south in a straight line for approximately 0.8 mile to Pennsylvania Highway 23.

(26) Then west following Pennsylvania Highway 23 to the intersection with Pennsylvania Highway 441 at Marietta.

(27) Then west following Pennsylvania Highway 441 to Pennsylvania Highway 241 near Bainbridge.

(28) Then northwest in a straight line for approximately 5.5 miles to the point where the Consolidated Railroad Corporation crosses the West Donegal-

Mount Joy Township boundary in Rheems.

(29) Then east in a straight line for approximately 3.3 miles to the Mt. Pleasant Church.

(30) Then east in a straight line for approximately 3.8 miles to the Erismans Church.

(31) Then east in a straight line for approximately 3.3 miles to the point where the 400 foot contour line crosses Pennsylvania Highway 72 south of Valley View.

(32) Then following the 400 foot contour line east to Pennsylvania Highway 501.

(33) Then east in a straight line for approximately 2.9 miles to the Union Meetinghouse.

(34) Then southeast in a straight line for approximately 1.0 miles to the point where Pennsylvania Highway 272 (indicated as U.S. Highway 222 on the map) crosses Cocalico Creek (which forms the boundary between West Earl and Warwick Townships).

(35) Then northwest following the West Earl Township boundary to its intersection with U.S. Highway 322 southeast of Ephrata.

(36) Then east in a straight line for approximately 3.4 miles to the Lincoln Independence School.

(37) Then southeast in a straight line for approximately 1.7 miles to the West Terre Hill School.

(38) Then east in a straight line for approximately 8.5 miles to the beginning point.

Signed: April 1, 1982.

G. R. Dickerson,
Director.

Approved: April 21, 1982.

John M. Walker, Jr.,
Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12803 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Parts 240 and 252

[T.D. ATF-100 re: T.D. ATF-88]

Transfer of Wine, Without Payment of Tax, to Customs Bonded Warehouses for Embassy Removals and Other Purposes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Treasury Department is adopting as a final rule, a temporary rule which established a procedure whereby wine may be transferred to customs bonded warehouses without payment of tax for the purpose of withdrawal by

foreign embassies, legations, etc., as authorized by law. The temporary rule was published on August 5, 1981. No adverse comments were received, therefore this Treasury decision adopts without change, the temporary rule as a final (permanent) rule.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: Steven C. Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385; (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision ATF-88, published on August 5, 1981, (46 FR 39812) promulgated temporary regulations to implement section 2 of Pub. L. 96-601 (Tax Administrative Provisions Revisions). The regulations established a procedure whereby wine may be transferred to customs bonded warehouses without payment of tax for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law. Concurrently with publication of the temporary rule, public comment was solicited by Notice No. 377 (46 FR 39853, Aug. 5, 1981).

Public Comments

Two public comments were received pertaining to the temporary rule. One of them advocated that foreign governments make it easier for American wine to be sold in their countries. The other was a general statement of support for and approval of the temporary rule.

Executive Order 12291

It has been determined that these regulations are not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because they will not have an annual effect on the economy of \$100 million or more; they will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and they will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this rule because the regulations will not have a

significant economic impact on a substantial number of small entities. Any economic impact flows directly from Pub. L. 96-601 and not the implementing regulations. The rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities.

Accordingly, the Secretary of the Treasury has certified under the provisions of section 3 of Regulatory Flexibility Act (5 U.S.C. 605(b)) that the regulations will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal drafter of this document is Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 240.

Administrative practice and procedure, Claims, Electronic funds transfer, Excise taxes, Exports, Fruit juices, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine, Vinegar.

27 CFR Part 252.

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

This document is issued under the authority contained in 26 U.S.C. 7805. Accordingly, the amendments to 27 CFR Parts 240 and 252 published on August 5, 1981, (46 FR 39812) are hereby established as a final rule without change.

Signed: March 18, 1982.

Stephen E. Higgins,

Acting Director.

Approved: April 16, 1982.

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12861 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

POSTAL SERVICE

39 CFR Part 265

Release of Information; Disclosure of Listings of Employees at Postal Facilities

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In accordance with a recent Federal court decision, the Postal Service announces the amendment of its regulations relating to the release of information to provide for disclosure, upon written request, of lists of employees working at particular postal facilities.

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT: A. Scott Hamel, (202) 245-4142.

SUPPLEMENTARY INFORMATION: In August of 1980 in an action brought pursuant to 5 U.S.C. 552, the Freedom of Information Act (FOIA), the United States District Court for the Northern District of Texas held that the FOIA requires the disclosure of listings of employees working at particular postal facilities. "National Western Life Insurance Co. v. United States," 512 F.Supp. 454. During the intervening period the Postal Service has developed procedures which permit compliance with such requests in an orderly manner while minimizing the risk of disruption to the operations of facilities at which such requests are made. This final rule amends postal regulations to reflect these procedures and to state that the Postal Service will, to the extent required by law, upon written request, provide a listing of postal employees working at a particular postal facility. The listing will contain the names of employees at a particular facility, but not their home addresses. The request must, of course, comply with the requirements of the FOIA and implementing Postal Service regulations. 39 CFR Part 265.

This rule adds new 39 CFR 265.6(a)(5), which states the basic policy of providing employee listings. Inasmuch as provision of these listings has been held to be required by the FOIA, their disclosure is not dependent upon the adoption of this regulation. It seems appropriate nonetheless to state the policy expressly in postal regulations since it represents a substantial change in a previous practice.

We wish particularly to invite attention to the use of the phrase "to the extent required by law" as a qualification on the duty assumed by the Postal Service in § 265.6(a)(5). This phrase is intended to indicate that the

regulation does no more than state the obligation which the court in "National Western Life" has held is imposed on the Postal Service by the Freedom of Information Act. The regulation does not reflect the Postal Service's voluntary assumption of any duty to disclose employee listings which would itself require such disclosure, apart from any externally imposed obligation.

Section 265.6(e)(1) of 39 CFR is also amended specifically to except listings of postal employees as provided by § 265.6(a)(5) from the statutory prohibition, found at 39 U.S.C. 412 and implemented by that section, against release by postal officers and employees of mailing or other lists of the names or addresses of "postal patrons or other persons." The opinion in "National Western Life" held that prohibition inapplicable to such employee listings. We regard this amendment as necessary to make it as clear as possible which lists are available to the public and which are not.

Finally, § 265.7(a)(2) of 39 CFR, the provision designating the officials to whom requests for records shall be submitted generally, is amended to state specifically that the Records Officer at Postal Service Headquarters will be deemed custodian whenever requests for employee lists are received. The Postal Service has concluded that the responsibility for responding to these requests should be centralized at Headquarters rather than remaining with the heads of particular facilities. This conclusion is based in part on the perceived need for relieving managers in the field of the burden of distinguishing between mandatory and prohibited lists, in part on the fact that comprehensive listings of postal employees in a form normally requested by the public are not routinely maintained at post offices and so will normally be compiled from computerized records at Headquarters, and in part on the need to ensure that all persons requesting a listing receive a uniform response.

Also, centralization of responses will provide the greatest measure of assurance that requesters will be made aware of the Postal Service's long-standing policy of refusing to accept or distribute personal communications to employees at postal facilities, before the requesters elect to incur the cost of obtaining listings of such employees. Dissemination of notice of this policy in all cases is of great concern to the Postal Service, since our experience teaches that these listings are most often requested by insurance companies, as was true in the "National Western Life" case itself, and since we think it

reasonable to infer from this that they are being sought for purposes of commercial solicitation.

Although 39 U.S.C. 410(a) exempts the Postal Service from the notice and comment requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service ordinarily invites public comment on proposed changes to its regulations. Since, however, this regulation does no more than incorporate what has been held to be required by law, notice and an opportunity for the submission of comments in this case are deemed unnecessary. 5 U.S.C. 553(b)(B).

In view of the above considerations, the Postal Service hereby adopts the following amendments of Title 39, Code of Federal Regulations:

List of Subjects in 39 CFR Part 265

Freedom of information, Postal Service

PART 265—RELEASE OF INFORMATION

1. In § 265.6, paragraph (a)(5) is added and paragraph (e)(1) is revised to read as follows:

§ 265.6 Availability of records.

(a) * * *

(5) Listings of Employees' Names.

Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

* * * * *

(e) Information not available for public disclosure. (1) Except as provided by paragraph (a)(5) of this section, the Postal Service and its officers and employees shall not make available to the public by any means or for any purpose any mailing list or other list of names or addresses (past or present) or postal patrons or other persons.

2. In § 265.7, paragraph (a)(2) is amended by adding a sentence at the end thereof as follows:

§ 265.7 Procedure for inspection and copying of records.

(a) * * *

(1) * * *

(2) * * *

The USPS Records Officer is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See § 265.6(a)(5).

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-13047 Filed 5-11-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2107-1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today announcing approval of State implementation plan (SIP) revisions submitted by the Tennessee Department of Public Health on September 30, 1981. The submittals deal with: the control of asbestos; installation of in-stack continuous monitors on sulfuric acid plants and liquid sulfur dioxide plants; adoption of current New Source Performance Standards; changes in the State's definition of Volatile Organic Compounds (VOC); and VOC Alternative Emission Standard (Bubble) provisions.

EFFECTIVE DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Denise W. Pack of EPA Region IV's Air Program Branch (See EPA IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, D.C.
20460;

Environmental Protection Agency,
Region IV, Air Programs Branch, 345
Courtland Street, NE., Atlanta,
Georgia 30365;

Library, Office of the Federal Register,
1100 L Street NW., Room 8401,
Washington, D.C. 20005;

Tennessee Department of Public Health,
150 9th Avenue North, Nashville,
Tennessee 37203.

FOR FURTHER INFORMATION CONTACT:

Denise W. Pack, EPA Region IV, Air Programs Branch, at the above listed address and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: EPA is today approving Amendments of Tennessee Department of Public Health, Bureau of Environmental Health Services, Division of Air Pollution Control which became effective on October 5, 13, 18, and 19, 1981, and were

submitted to EPA for approval as SIP revision on September 30, 1981.

The following is a discussion of the various provisions.

Rule 1200-3-11-.02(2)(1)(5)(ii) is amended by adding a requirement for the covering of asbestos-containing waste material with at least 60 centimeters of compacted non-asbestos-containing material. Affected sites shall be maintained to prevent exposure of the asbestos-containing waste.

Rule 1200-3-12-.04(2)(c) pertaining to large existing fuel burning installations is replaced with a requirement for all sulfuric acid plants and liquid sulfur dioxide plants located in Class I Counties and existing on January 1, 1979, to install and operate a continuous in-stack sulfur dioxide monitor. Monitor types and locations are subject to approval by the Technical Secretary, and the instrument is subject to the provisions of paragraph 1200-3-10-.02-(1) of the Tennessee regulations.

Rule 1200-3-18-.02(1)(ii) is revised to read: Volatile organic compound (VOC) means any compound of carbon that has a vapor pressure greater than 0.1 millimeters of mercury at standard conditions excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate. The following compounds will not be considered volatile organic compounds: methane, ethane, 1,1,1-trichloroethane (methyl chloroform) and trichlorotrifluoroethane. In no case shall this definition be construed to be more restrictive than the results obtained from the use of the applicable test method for a source as specified in Rule 1200-3-18-.44, -.45, and -.46 and other referenced methods.

Rule 1200-3-18-.04, "Alternate Emission Standard," (Bubble) is a new regulation allowing facilities with process emissions of VOC regulated by specific rules of Chapter 1200-3-18 to apply for a certificate of alternate control. The Technical Secretary may grant this request if the facility meets the conditions specified in the regulation. The alternate control scheme shall be submitted to and approved by EPA as a SIP revision.

In Rule 1200-3-18-.42(3) dealing with Individual Compliance Schedules, the phrase "these regulations" is replaced with "the State Implementation Plan."

EPA has reviewed these amendments to the Tennessee regulations and is approving them as submitted. This action is being taken without prior proposal because the Tennessee regulatory changes are noncontroversial and EPA anticipates no comments on

them. The public should be advised that this action will be effective July 12, 1982.

However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b) the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit on or before July 12, 1982. This action may not be challenged later in proceedings to enforce its requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1981.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart RR—Tennessee

Section 52.2220 is amended by adding paragraph (c)(41) as follows:

§ 52.2220 Identification of plan.

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

(41) Revisions involving the following regulations—

- Rule 1200-3-11-.02(2)(1)5.(ii): Asbestos;
- Rule 1200-3-12-.04(2)(c): Large Existing Fuel Burning Installations;
- Rule 1200-3-18-.02(1)(ii): Definitions: Volatile Organic Compounds;

Rule 1200-3-18-.04: Alternative Emission Standard; and

Rule 1200-3-18-.42(3): Individual Compliance Schedules—submitted on September 30, 1981, by the Tennessee Department of Public Health.

[FR Doc. 82-12895 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-10-FRL-2119-7]

New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants; Subdelegation of Authority to an Oregon Local Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule.

SUMMARY: EPA is today approving a request dated March 11, 1982 from the State of Oregon Department of Environmental Quality for subdelegation to enforce certain New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants to the Lane Regional Air Pollution Authority.

DATE: April 23, 1982.

ADDRESSES: The related material in support of this subdelegation may be examined during normal business hours at the following locations:

Central Docket Section (10A-82-4),
West Tower Lobby, Gallery I,
Environmental Protection Agency, 401
M Street, S.W., Washington, D.C.
20460

Air Programs Branch, Environmental
Protection Agency, 1200 Sixth Avenue,
Seattle, Washington 98101
State of Oregon, Department of
Environmental Quality, 522 S.W. Fifth
Avenue, Portland, Oregon 97207.

FOR FURTHER INFORMATION CONTACT:

Mark H. Hooper, Environmental
Protection Agency, 1200 Sixth Avenue,
Seattle, Washington 98101, Telephone:
(206) 442-1949, FTS: 399-1949

SUPPLEMENTARY INFORMATION: Pursuant to section 111(c)(1) and 112(d) of the Clean Air Act, as amended, the Regional Administrator of Region 10, Environmental Protection Agency (EPA), delegated to the State of Oregon on November 10, 1975, and December 3, 1981, the authority to implement and enforce the program for New Source Performance (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). The delegation was announced in the Federal Register on February 20, 1976 and December 22,

1981 (41 FR 7749 and 46 FR 62066), respectively.

On March 11, 1982, the State of Oregon Department of Environmental Quality requested EPA's concurrence in the State's subdelegation of the NSPS and NESHAPS program to the Lane Regional Air Pollution Authority. After reviewing the State's request, the Regional Administrator determined that the subdelegation met all the requirements outlined in EPA's delegations. Therefore, the Regional Administrator on April 23, 1982, concurred in the subdelegation to the local agency listed below with the stipulation that all the conditions placed on the original delegation to the State shall also apply to the subdelegation to the local agency. EPA is today amending 40 CFR 60.4 and 61.4 to reflect the State's subdelegation.

This rulemaking is effective April 23, 1982 and is issued under the authority of section 111(c)(1) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 1857c-7).

Dated: April 23, 1982.

John R. Spencer,
Regional Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Section 60.4, is amended by adding paragraph (b)(MM)(ix):

§ 60.4 Address.

* * * * *

(b) * * *

(MM) * * *

(ix) Lane Regional Air Pollution Authority,
1244 Walnut Street, Eugene, Oregon 97403.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Section 61.4 is amended by adding paragraph (b)(MM)(viii):

§ 61.04 Address.

* * * * *

(b) * * *

(MM) * * *

(viii) Lane Regional Air Pollution Authority,
1244 Walnut Street, Eugene, Oregon 97403.

[FR Doc. 82-12851 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-5-FRL-2107-5]

Designation of Areas for Air Quality Planning Purposes: Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Rulemaking.

SUMMARY: This rulemaking changes the air quality attainment designation relative to the total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS) for the Cities of East Grand Forks and Silver Bay, Minnesota from secondary nonattainment to attainment. This change is based on monitoring data for 1980 and 1981 that show no violations of the appropriate NAAQS. EPA has determined that this is quality assured, representative data and satisfies requirements for an attainment redesignation.

DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the redesignation request and the supporting air quality data are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113.

Written comments on this action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja at the EPA, Region V, address above or call (312) 886-6038.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) of the Clean Air Act (the Act). This section directed each State to submit to the Administrator of EPA a list of the NAAQS attainment status for all areas within the State. The

Administrator was required to promulgate the State lists, with any necessary modifications. The Administrator published these lists in the Federal Register on March 3, 1978 (43 FR 8962), and made necessary amendments in the Federal Register on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

On March 3, 1978 and October 5, 1978 (43 FR 9005, 43 FR 46010), EPA designated the Cities of East Grand Forks and Silver Bay as nonattainment for the secondary NAAQS for TSP. These designations were based on monitored violations of the secondary standard.

On February 24, 1982, the Minnesota Pollution Control Agency (MPCA) requested that the Cities of East Grand Forks and Silver Bay be redesignated from secondary nonattainment to attainment. To support their requests, the MPCA submitted monitored data for 1980 and 1981.

EPA may redesignate an area to attainment if eight consecutive quarters may, of the most recent quality assured, representative ambient air quality data, show no violation of the appropriate NAAQS. EPA has reviewed the monitored data submitted by the MPCA for 1980 and 1981 for the 5th Avenue and 3rd Street site in East Grand Forks and the Campton and Kelley School sites in Silver Bay. No violations of the TSP NAAQS were recorded at these sites. EPA has determined that this is quality assured, representative data and satisfies the requirements for an attainment redesignation. Therefore, EPA is redesignating the Cities of East Grand Forks and Silver Bay as attainment for TSP.

§ 81.324 Minnesota.

	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Minnesota—TSP				
City of East Grand Forks	.	.	.	X.
City of Silver Bay	.	.	.	X.

[FR Doc. 82-12960 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

Since EPA views this action as a noncontroversial rulemaking, it is today changing the section 107 attainment designation of the Cities of East Grand Forks and Silver Bay from secondary nonattainment to attainment for TSP without prior proposal. This action will be effective July 12, 1982. However, if EPA is notified within 30 days that someone wishes to submit adverse or critical comments, then this action will be withdrawn and a new rulemaking will propose the action and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7407))

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Section 81.324 of Part 81 of Chapter I, Title 40, Code of Federal Regulations is amended. In the table for "Minnesota—TSP" the entries for City of East Grand Forks and City of Silver Bay should be revised to read as follows:

40 CFR Part 180

[PP 2F2625/R427; PH-FRL 2120-2]

Allethrin (Allyl Homolog of Cinerin I); Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for the insecticide allethrin (allyl homolog of cinerin I) when used before harvest in or on certain raw agricultural commodities. This regulation to eliminate the need to establish a maximum permissible level for residues of the insecticide in or on these raw agricultural commodities was requested by Webb Wright Corp.

EFFECTIVE DATE: Effective on May 12, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of February 24, 1982 (47 FR 8087) which announced that Webb Wright Corp., Box 1572, Fort Myers, FL 33902, had filed pesticide petition 2F2625 with the EPA requesting that an exemption from the requirement of a tolerance be established for allethrin (allyl homolog of cinerin I) when used before harvest in the production of artichokes (Jerusalem), beets, sugar beets, carrots, celery, Chinese cabbage, chickory, corn, endive, escarole, garlic, leeks, onions, parsley, parsnips, potatoes, salsify, shallots, sorghum (milo), sorghum grain, spinach, and sweet potatoes.

No comments were received in response to this notice of filing.

Considerations to exempt allethrin (allyl homolog of cinerin I) were based on its prior exemption from tolerance requirements in or on roots and leafy vegetables (§ 180.1002).

The metabolism of the insecticide is adequately understood for this use, and an adequate analytical method (gas chromatography) is available for enforcement purposes. There are

currently no regulatory actions pending against the continued registration of this insecticide.

The pesticide is considered useful for the purposes for which the exemption is sought, and it is concluded that establishment of the exemption will protect the public health. Therefore, the exemption is established as set forth below.

Any person adversely affected by this regulation may, by June 11, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: May 12, 1982.

List Of Subjects In 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, pesticides and pests.

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

Dated: April 26, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.1002 is revised to read as follows:

§ 180.1002 Allethrin (allyl homolog of cinerin I); exemption from the requirement of a tolerance.

The insecticide allethrin is exempted from the requirement of a tolerance for residues when used before harvest in the production of the following commodities:

Commodities

Apples
Artichokes (Jerusalem)
Beans
Beets
Beets, sugar
Broccoli
Brussels sprouts
Cabbage
Carrots
Cauliflower
Celery
Chickory
Chinese cabbage
Citrus
Collards
Corn
Endive
Escarole
Garlic
Horseradish
Kale
Kohlrabi
Leeks
Lettuce
Mushrooms
Mustard greens
Onions
Parsley
Parsnips
Peaches
Pears
Peppers
Potatoes
Radishes
Rutabagas
Salsify
Shallots
Sorghum (milo)
Sorghum, grain
Spinach
Sweet potatoes
Tomatoes
Turnips

[FR Doc. 82-12529 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1F2579/R433; PH-FRL 2122-4]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Trifluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide and plant growth regulator trifluralin in or on certain raw agricultural commodities. This regulation to establish the maximum permissible level for residues of trifluralin in or on these

commodities was requested by Elanco Products Co.

EFFECTIVE DATE: Effective on: May 12, 1982.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice in the Federal Register of December 16, 1981 (46 FR 61327) which announced that Elanco Products Co., a Division of Eli Lilly and Co., 740 South Alabama St., Indianapolis, IN 46285, had submitted a pesticide petition (PP 1F2579) to the EPA. The petition proposed that 40 CFR 180.207 be amended by establishing tolerances for residue of the herbicide and plant growth regulator trifluralin (alpha, alpha, alpha-trifluoro-2,6-dinitro-N,N-dipropyl-p-toluidine) in or on the raw agricultural commodities flax at 0.05 ppm. This petition was subsequently amended to include flaxseed straw at 0.05 ppm. The proposed tolerance for "flax" is established in terms of "flaxseed".

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances included a 2-year rat feeding study with a systemic no-observed-effect level (NOEL) of 2,000 ppm (highest dose tested); a 2-year rat feeding study with a systemic lowest-effect-level (LEL) of 20,000 ppm (highest dose tested); a 2-year rat feeding study with an increase in urinary tract tumors in male rats observed at all doses tested (813 ppm, 3,250 ppm, and 6,500 ppm) and in female rats observed at 3,250 ppm and 6,500 ppm, and thyroid tumors in male rats; two 2-year dog feeding studies with systemic NOEL's of 10 milligrams (mg)/kilogram (kg) (highest dose tested) and 25 mg/kg (highest dose tested); a 3-year dog feeding study with a systemic NOEL of 10 mg/kg and a systemic LEL of 25 mg/kg (highest dose tested); a 2-year mouse feeding study negative for oncogenicity in both sexes; a dog reproduction study with a reproductive NOEL of 25 mg/kg (highest dose tested);

a supplementary rabbit teratology study; and a supplementary rat reproduction study.

Data currently lacking and considered desirable are teratology studies in two species, mutagenicity studies (multi-test evidence), and a rat reproduction study.

Oncogenicity tests conducted by the National Cancer Institute (NCI) with trifluralin technical chemical in rats and mice indicated the chemical is not oncogenic in rats nor in male mice under the terms of the bioassay. Hepatocellular carcinomas and alveolar/bronchiolar adenomas were observed in female mice at a statistically significant incidence when compared to controls.

The agency concludes that the total dietary cancer risk from exposure to residue of trifluralin is less than six incidences in 10,000,000.

The acceptable daily intake (ADI), based on the 2-year dog feeding study (NOEL of 10 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. The maximum permissible intake (MPI) for a 60-kg human is calculated to be 6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0417 mg/day; the current action will contribute only 2×10^{-6} mg/day. Published tolerances utilize 0.70 percent of the ADI; the current action will utilize less than 0.01 percent of the ADI.

The nature of the residues is adequately understood and adequate analytical method (gas chromatography with an electron capture detector and thin layer chromatography) is available for enforcement purposes.

Flaxseed and straw are minor animal feed items. Based on this fact, the metabolism studies and residue levels involved, there is no expectation of residues in meat, milk, poultry, or eggs.

EPA published in the Federal Register of August 30, 1979 (44 FR 50911) a notice of determination and availability of a position document concerning trifluralin. After extensive review, the Agency determined that the benefits outweighed the risks for all uses if the technical and formulated products contained less than 1 ppm of NDPA.

The formulations for the accompanying use contain trifluralin with less than 1 ppm of NDPA. Nitrosamines in these formulations are not expected to cause residue problems. The Agency will reevaluate all the existing tolerances for trifluralin when the final report and validation audit of

the laboratory records on all the chronic toxicity/oncogenicity studies are available.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR Part 180 would protect the public health. In light of the chronic toxicity oncogenicity studies, the Agency considers the risk for dietary exposure of trifluralin-treated flaxseed and straw to be insignificant since flax is used mainly to produce linseed oil, and the ADI and the TMRC are not affected. Therefore, there will not be an increased risk to humans.

The pesticide is considered useful for the purpose for which the tolerances are sought and it is concluded that establishment of the tolerance will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before June 11, 1982, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Effective on: May 12, 1982.

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Raw agricultural commodities, Pesticides and pests.

Dated: May 3, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, 40 CFR 180.207 is amended by adding and alphabetically inserting the raw agricultural commodities flaxseed and flaxseed straw to read as follows:

§ 180.207 Trifluralin; tolerances for residues.

Commodities	Parts per million
Flax, seed.....	0.05
Flax, straw.....	0.05

[FR Doc. 82-12894 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

Availability of Information to the Public Under the Freedom of Information Act; Redlegation of Authority

AGENCY: Office of the Secretary, HHS.

ACTION: Final regulation.

SUMMARY: The Department of Health and Human Services hereby amends its regulation implementing the Freedom of Information Act. This revision designates officials who shall have responsibilities for determining whether records must be withheld from disclosure, or released, under provisions of the Act (5 U.S.C. 552).

EFFECTIVE DATE: June 11, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Russell M. Roberts, Freedom of Information Officer, U.S. Department of Health and Human Services, Room 118-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, telephone 202/472-7453.

SUPPLEMENTARY INFORMATION: Because this is an internal redelegation of duties, the Secretary has determined that public comment is unnecessary.

This revision does not meet the standards set forth in Executive Order 12291 for classification as a major rule,

and no regulatory analysis statement is required.

No environmental impact statement is needed under 45 U.S.C. 4321 et seq.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally the Department lists in its announcements the number and title of affected individual programs for the guidance of the public. Requests that persons make of the Department for records under the Freedom of Information Act affect every HHS program, and it has been determined that it is not cost effective nor in the public interest to list all of them. In lieu of the individual program listing, the Department invites readers to direct questions to the above address on whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

The Secretary certifies that this amendment will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354, because this revision merely redelegates authority within the Department.

Neither these nor other sections in 45 CFR Part 5 require the use of a form. Persons who request records under authority of the FOIA may continue to do so by letter, or in person, and therefore there is no change of burden or imposition of a new burden on the public as defined by the Paperwork Reduction Act of 1980, Pub. L. 95-511.

List of Subjects in 45 CFR Part 5

Freedom of information.

Dated: May 6, 1982.

Richard S. Schweiker,
Secretary.

Accordingly, 45 CFR Part 5 is amended to read as follows:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUBLIC LAW 90-23

1. Revise the heading and text of § 5.32 to read as follows:

§ 5.32 Freedom of Information Officers.

(a) Only Freedom of Information Officers as listed below have the authority to release or deny records in response to Freedom of Information Act requests.

(1) *HHS Freedom of Information Officer.* If the records you seek are addressed to or from an official or office of the Office of the Secretary, including

OS Staff Divisions, or if the records you seek are the records of any organizational unit of the Department not specifically identified below, or if the records you seek involve more than one Operating Division of the Department, only the HHS Freedom of Information Officer or his or her designee, may determine whether to release or deny the records.

(2) *Regional Freedom of Information Officer.* If the records you seek are addressed to or from an official or office of the Office of the Regional Director (i.e., Office of the Secretary, including OS Staff Divisions, in regional Offices), or if the records you seek involve more than one Operating Division in the region, only the Regional Public Affairs Director, who also is the Regional Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(3) *OHDS Freedom of Information Officer.* If the records you seek are exclusively records of the Office of Human Development Services, including its records in the regions, only the Director, Office of Public Affairs, OHDS, who also is the OHDS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(4) *PHS Freedom of Information Officer.* If the records you seek are exclusively records of the Public Health Service, or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Director, Office of Public Affairs, PHS, who also is the PHS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records except as follows:

(i) *CDC Freedom of Information Officer.* If the records you seek are exclusively records of the Centers for Disease Control, only the Director, Office of Public Affairs, CDC, who also is the CDC Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(ii) *FDA Freedom of Information Officer.* If the records you seek are exclusively records of the Food and Drug Administration, only the Assistant Commissioner for Public Affairs, FDA, who also is the FDA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(iii) *NIH Freedom of Information Officer.* If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, NIH, who

also is the NIH Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(5) *SSA Freedom of Information Officer.* If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Information, SSA, who also is the SSA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(6) *HCFA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Office of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(b) The Assistant Secretary for Public Affairs must concur in any designations and in any further delegations of these authorities.

2. Revise the heading and text of § 5.53 to read as follows:

§ 5.53 Release and Denial of Records.

Determinations to release or deny records in response to Freedom of Information Act requests will be made only by those officials listed in § 5.32 of this Part, or as otherwise provided by regulation. Determinations to release or deny records will be in writing, signed by the appropriate Freedom of Information Officer. Discloseable records will be provided promptly and in accordance with the policies, schedule, and procedures contained in Subpart E of this Part. If records or portions of records are denied, the written response will contain the reasons for the denial including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion. The notice will also provide the requester with appropriate information on how to exercise the right of appeal under Subpart G of this Part. Such notification shall also set forth the names or titles and positions of each person responsible for the denial of such request if such person is other than the appropriate Freedom of Information Officer.

3. Revise the text of § 5.82 to read as follows:

§ 5.82 By Whom Review Is Made.

(a) The following officials will represent the Secretary in considering

appeals of denials of records and refusals to waive or reduce fees:

(1) Assistant Secretary for Human Development Services or his or her designee—appeals of decisions of the OHDS Freedom of Information Officer.

(2) Assistant Secretary for Health or his or her designee—appeals of decisions of the PHS Freedom of Information Officer, the CDC Freedom of Information Officer, the FDA Freedom of Information Officer, or the NIH Freedom of Information Officer.

(3) Commissioner of Social Security or his or her designee—appeals of decisions of the SSA Freedom of Information Officer.

(4) Administrator, Health Care Financing Administration or his or her designee—appeals of decisions of the HCFA Freedom of Information Officer.

(5) Assistant Secretary for Management and Budget or his or her designee—appeals concerning all other records of the Department.

(b) Officials designated to decide appeals may not be the same officials to whom authority under § 5.32 of this Part to release or deny records is delegated. The Assistant Secretary for Public Affairs must concur in designations of authority to decide appeals.

(c) All decisions concerning appeals may be made only after consultation with the Office of General Counsel. Decisions on appeal also require the concurrence of the Assistant Secretary for Public Affairs or his or her designee.

(d) When one of the designated officials responds to an appeal, that decision will constitute final agency action on the Freedom of Information Act request.

(5 U.S.C. 552)

[FR Doc. 82-12969 Filed 5-11-82; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Plan amendment.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, has approved an amendment to the Fishery Management Plan for the Shrimp Fishery of the Gulf

of Mexico (FMP). This amendment provides procedures for modifying the boundaries of closed areas identified as the Tortugas Shrimp Sanctuary and the Texas closure. Regulations to implement this FMP amendment are not proposed at this time.

DATE: The amendment was effective April 6, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Jack T. Brawner, 813-893-3141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was approved May 29, 1980, under the authority of the Magnuson Fishery Conservation and Management Act. Final regulations implementing the FMP were published in the *Federal Register* on May 20, 1981, at 46 FR 27489.

The Gulf of Mexico Fishery Management Council (Council) prepared and submitted for approval an FMP amendment. This amendment was initially approved on December 1, 1981. A notice of availability of the amendment inviting public comments appeared in the *Federal Register* (47 FR 4104) on January 28, 1982, as prescribed by section 305(a) of the Magnuson Fishery Conservation and Management Act. The public comment period ended March 15, 1982, with no comments received. The Assistant Administrator for Fisheries, NOAA, gave final approval to the amendment on April 6, 1982. Regulations will not be proposed at this time; instead, whenever an action under the amendment is needed, it will be implemented by regulatory amendment published in the *Federal Register*.

The FMP amendment provides a mechanism for modification of the boundaries of the closed areas identified as the Tortugas Shrimp Sanctuary and the Texas closure in 50 CFR 658.22 and 658.24. The amendment requires that an annual analysis of the effect of the closures be prepared by the National Marine Fisheries Service (NMFS) and submitted to the Council. The Secretary of Commerce will review the findings and, after consultation with the Council, may modify the geographic scope of the closures through an amendment to the regulations implementing the FMP.

Dated: May 6, 1982.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-12862 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 47, No. 92

Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

Regulations and Policy Statements

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Notice of proposed rulemaking; review of existing regulations.

SUMMARY: This document proposes to revise and consolidate the regulations regarding registrations, rates, brand inspection and stockyard posting. The document also proposes to remove two regulations concerning packer ownership of custom feedlots and the private enforcement of exchange, association or organization rules or by-laws and one policy statement regarding self-regulation by stockyard owners. Also, a new policy statement with respect to packers which engage in the business of operating a custom feedlot is proposed. These proposals will reduce the existing reporting requirements for industry participants and will clarify existing regulations.

DATE: Comments must be filed on or before July 12, 1982.

ADDRESS: Comments may be mailed to the Administrator, Packers and Stockyards Administration, Room 3039, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Comments received may be inspected during normal business hours in the Office of the Administrator.

FOR FURTHER INFORMATION CONTACT: John A. Sands, Jr., Director, Livestock Marketing Division, phone (202) 447-6951 or Kenneth Stricklin, Chief Livestock Procurement Branch, phone (202) 447-7363.

SUPPLEMENTARY INFORMATION: This is the third group of regulations proposed for review in accordance with the revised plan of review published by the Packers and Stockyards Administration July 8, 1981 (46 FR 35279).

Consideration of the comments filed in response to three earlier publications in the *Federal Register* (44 FR 71802; 45 FR 21168; 45 FR 87002), which outlined the agency's plan for review, the recommendations of an internal agency task force, and the comments received from industry groups and others in response to the task force report has resulted in the following proposed amendments to the regulations and policy statements.

The following proposal would remove regulations 201.4, 201.7, 201.13, and 201.70a (9 CFR 201.4, 201.7, 201.13, 201.70a) and policy statement 203.8 (9 CFR 203.8). Changes are proposed to regulations 201.6, 201.10, 201.11, 201.12, 201.17, 201.19 through 201.26, and 201.86 through 201.93 (9 CFR 201.6, 201.10, 201.11, 201.12, 201.17, 201.19-201.26, and 201.86-201.93). Policy statement 203.17 would be clarified and a new policy statement 203.18 is proposed regarding packers which engage in custom feeding of livestock. No changes are proposed in regulations 201.3 and 201.5 (9 CFR 201.3 and 201.5) and policy statement 203.12 (9 CFR 203.12).

Industry Rules

Regulation 201.4 currently provides that any valid by-law, rule and regulation of a livestock exchange, association or organization which is not inconsistent or in conflict with the Act and regulations may be enforced. Although the statute does not specifically address the authority of livestock exchanges to adopt and enforce rules and regulations, it does authorize stockyard owners and market agencies to make such rules. Such livestock exchanges are made up of market agencies operating at stockyards, and their authority to make reasonable and non-discriminatory rules and regulations governing their operations is inherent. (Cf. *Western Iowa Farms, et al. v. Sioux City Stock Yards*, 629 F.2d 502 (8th Cir. 1980); involving the authority of stockyard owners to establish rules pursuant to section 307 of the Act (7 U.S.C. 208)). Accordingly, it is the opinion of the Administration that the regulation is no longer necessary, and it is proposed for removal.

Posting Stockyards

Regulations 201.5 and 201.6 define the procedural requirements for public notice of the posting of a stockyard subject to the provisions of the Act.

No changes are proposed in regulation 201.5 which currently requires the assignment of a numerical designation to any stockyard subject to the Act and the public display of such designation or posting notice in three conspicuous places at the stockyard. This regulation is necessary to implement the requirements of section 302(b) of the Act (7 U.S.C. 202(b)).

An amendment to regulation 201.6 is proposed to eliminate the requirement that copies of the depositing notice be displayed in three conspicuous places at the stockyard. Under current practice, stockyards are deposited only when business on the stockyard has ceased and evidence indicates that operations will not resume. Often the physical facilities have been destroyed or converted to other uses and the placing of public notices at the location serves no useful purpose. The regulation, however, will continue to require publication of the depositing in the *Federal Register* and notice to the stockyard owner at the last known address.

Regulation 201.7 is proposed for removal. The rule now requires stock yard owners to provide written notice of any change in name, address, management or ownership of the stockyard to the Administrator within 10 days of the occurrence. As this information is generally available from other sources, including annual and special reports, state agencies, and day-to-day agency operations, removal of this regulation would reduce the existing reporting requirements on the industry without lessening the agency's ability to enforce the provisions of the Act.

Registration

Regulations 201.10 through 201.13 set forth the registration requirements for persons operating or seeking to operate as market agencies and dealers. The Administration proposes to amend regulation 201.10, consolidate regulations 201.11 and 201.12 and remove regulation 201.13.

Regulation 201.10 would be amended to eliminate the requirement that a current financial statement accompany the application for registration. The applicant would be required to certify that its financial condition meets the requirements of the Act. Such certification would appear on the application form approved by the

Administrator or as an attachment thereto.

It is anticipated that this proposal will eliminate the industry cost associated with the preparation of the financial statement and the considerable agency expense previously incurred in the acquisition and review of acceptable financial data. This action should not adversely affect the Administration's ability to assure an applicant's fitness under the Act.

Additionally, the regulation would be amended to remove the requirement that the application for registration, once filed with a regional office of the Packers and Stockyards Administration, must then be forwarded to Washington. This relates to matters of internal agency procedure and is unnecessary in the regulation.

Paragraph 201.10(b), which defines the conditions under which the Administrator may institute a "show cause" proceeding to deny an application for registration, would also be clarified. The Administrator is authorized to institute a "show cause" proceeding if the Administrator has reason to believe the applicant is unfit to engage in business subject to the Act and to deny the application for registration if the applicant is found, after hearing, to be unfit. However, as currently written, the regulation may be interpreted to preclude the Administrator from denying an application for registration on the basis of prior unlawful conduct solely because the applicant has been the subject of a formal administrative proceeding under the Act resulting in the imposition of a cease and desist order. Such was not the intent of the regulation. The Administration occasionally brings formal administrative actions against unregistered dealers or market agencies who have engaged in serious violations involving fraud or deceit and which would otherwise warrant the imposition of a suspension of registration. If the current regulations were interpreted restrictively, the Administration could be required to register such persons solely because those individuals had been ordered to cease and desist from such violations. The proposed clarification is designed to cure this ambiguity.

Paragraph 201.10(d) would also be modified to allow a market agency selling on commission to register as a market agency to provide clearing services for market agencies buying on commission and dealers. This recommendation would relieve selling agencies of a substantial restriction on their business activities.

Regulations 201.11 and 201.12 are proposed for consolidation. The Administration has determined these regulations to be necessary to its enforcement of the Act and recommends consolidation for simplification of the current regulations.

The proposed removal of regulation 201.13, which presently requires registrants to report any change in name, address, management or control, would ease current industry reporting requirements. This information can be obtained from annual reports, state agencies and from other industry sources, and the removal of this regulation will not adversely affect the agency's ability to enforce the Act.

Rates and Charges

The existing regulations 201.17 and 201.19-201.26 set forth the requirements for the filing of rate schedules, the placement and design of such schedules, the procedures for amendments to such schedules and joint schedules.

It is proposed that all the existing regulations pertaining to schedules of rates and charges by stockyard owners and market agencies operating at a stockyard be removed and that a single regulation containing the simplified tariff requirements be issued.

The Act sets forth the requirements pertaining to rates and charges and it is the opinion of the agency that restatement of these provisions is unnecessary. The regulations as to the appropriate style and form of rate schedules do not materially assist the agency in the enforcement of the rate provisions of the Act.

Section 201.24, which deals with the application of prescribed rates, is proposed for removal. This regulation is unnecessary in light of the Administration's current policy with respect to rate regulation as set forth in § 203.17 of the statements of general policy, pursuant to which the Administration no longer prescribes rates or investigates or reviews for reasonableness the level or rates and charges assessed at a stockyard except under compelling circumstances.

Policy statement § 203.17 is proposed for revision to conform to the proposed consolidation of the regulations pertaining to rates and charges set forth above by deleting subsections (c) and (f) of the existing policy statement.

Packer Ownership of Custom Feedlots

The regulation concerning packer/custom feedlots, regulation 201.70a, became effective on July 1, 1974. Prior to its adoption, extensive public hearings were held and numerous written comments were received and

considered. In promulgating regulation 201.70a, the Administration sought to address and remedy two potential problems associated with packer/custom feedlot relationships resulting from the packer's conflicting roles as both a potential buyer of livestock from the custom feedlot and an agent to the feedlot customers with responsibility to market their fed livestock to their best advantage. The other major problem was the potential for restriction of competition resulting from packer control of an increasingly significant livestock marketing channel.

Since the promulgation of regulations 201.70a, the Administration has reviewed or investigated numerous joint ownership situations, including a major investigation of the marketing of fed cattle in the High Plains region, and has approved joint ownership arrangements where it appeared that conflicts of interest did not exist or had been removed and where the arrangement was considered beneficial to competition. As a result of these reviews and investigations, the Administration has redefined its policy concerning packer/custom feedlot arrangements. Accordingly, the Administration proposes to delete regulation 201.70a and to issue a new policy statement 203.18 to advise interested persons of the current policy of the Administration concerning such relationships. That statement reflects the Administration's long standing position that the Act should be administered to prevent injury resulting from conflicts of interest or from arrangements which tend to restrict competition.

Brand Inspection

Regulations 201.86 through 201.93 pertain to the authorized inspection of livestock for brands, marks or other identifying characteristics to determine ownership. The Administration proposes to consolidate these regulations and issue a single revised regulation. The proposed regulation conforms with the statutory provisions by continuing to require specific application for authorization to conduct brand inspections, registration and the filing of fee schedules for such inspections. The existing provisions for reciprocal agreements between authorized brand inspection agencies and maintenance of consignment identities (201.91 and 201.92) will remain.

Regulations 201.89, 201.90 and 201.93 would be removed, easing the recordkeeping requirements imposed on authorized brand inspection agencies. Further, the inspection contracts to

which regulation 201.93 applied have terminated and no new contracts may be so filed.

Policy Statements

Policy statement 203.8 is proposed for removal. This policy statement was first issued in 1965 at a time when several stockyard owners sought to convert their method of selling livestock from private treaty to auction and were reluctant to do so because of uncertainty as to the requirements of the Packers and Stockyards Act. The statement therefore reiterates the requirements of sections 304 and 307 of the Act that stockyard services be furnished in a reasonable and non-discriminatory manner and further indicates that the Administration has not favored method of marketing but rather encourages innovation and self-regulation by stockyard owners to meet competition. Additionally, the statement recommends consultation on market rules between stockyard owners and market agencies doing business on the stockyard and advocates tolerance by stockyard owners toward such market agencies occasionally operating off-market. The market conditions which created the need for this policy statement have stabilized and the usefulness of the statement has ended. Removal of this statement should cause no disruption to the industry or to the enforcement efforts of the agency.

No changes are proposed in policy statement 203.12. The statement defines discrimination in the furnishing of stockyard services or facilities or in the establishment of stockyard rules or regulations because of race, religion, color or national origin of those persons using the stockyard services or facilities to be a violation of the Act. This statement was issued in 1968 and continues to reflect the position of the Department.

The proposed change in policy statement 203.17 is sought, as previously stated, to conform the policy statement to the proposed rate regulation 201.17, and clarify the Administration's enforcement position with respect to the reasonableness of rates.

Policy statement 203.18 is proposed for the reasons previously stated in the discussion of the removal of regulation 201.70a.

Executive Order

It has been determined that the proposals to amend and remove regulations relating to the posting of stockyards, the registration of market agencies and dealers, rates and charges, packer ownership of custom feedlots and brand inspection are not "major"

rules as defined by section 1(b) of E.O. 12291.

The proposed rules will not have an annual effect on the economy of \$100 million or more, will not result in major increases in costs or prices for consumers, individual industries, government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, regulatory impact analyses are not required.

Regulatory Flexibility Act

B. H. (Bill) Jones, Administrator, Packers and Stockyards Administration, has determined that these proposals will not have a significant economic impact on a substantial number of small entities.

These proposals will reduce the cost of doing business for market agencies and dealers, by eliminating the costs associated with the requirements for preparing and filing financial statements with applications for registration and the filing of name and ownership changes by registrants and stockyard owners. Similarly, paperwork costs to the agency will be reduced.

List of Subjects in

9 CFR Part 201

Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

9 CFR Part 203

Reporting and recordkeeping requirements, Stockyards, Trade practices.

(7 U.S.C. 203, 207 and 228(a))

Done at Washington, D.C. May 6, 1982.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

§§ 201.4, 201.7, 201.12, 201.13, 201.19–201.26, 201.70a, 201.87–201.93 and 203.8 [Removed]

1. It is proposed to remove §§ 201.4, 201.7, 201.12, 201.13, 201.19, 201.20, 201.21, 201.22, 201.23, 201.24, 201.25, 201.26, 201.70a, 201.87, 201.88, 201.89, 201.90, 201.91, 201.92, 201.93 and 203.8.

2. It is proposed to revise §§ 201.6, 201.10, 201.11, 201.17, 201.86 and 203.17

(9 CFR 201.6, 201.10, 201.11, 201.17, 201.86, 203.17) to read as set forth below.

§ 201.6 Depositing of stockyards; notice.

When a stockyard is found to no longer come within the definition of that term as contained in the Act, the stockyard shall be deposited by (a) publication of the determination in the *Federal Register* and (b) mailing notice to the stockyard owner at the last known address.

§ 201.10 Requirements and procedures.

(a) Every person operating or desiring to operate as a market agency or dealer as defined in 301 of the Act shall apply for registration under Act. To apply for registration, such persons shall file a properly executed application for registration, on forms furnished by the agency, and the bond as required in §§ 201.27 through 201.34.

(b) Each application for registration shall be filed with the regional supervisor for the region in which the applicant proposes to operate. If the Administrator has reason to believe that the applicant is unfit to engage in the activity for which application has been made, a proceeding shall be promptly instituted in which the applicant will be afforded opportunity for full hearing in accordance with the rules of practice governing such proceedings, for the purpose of showing cause why the application for registration should not be denied. In the event it is determined that the application should be denied, the applicant shall not be precluded, as soon as conditions warrant, from again applying for registration.

(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer shall be subject to the registration requirements of the Act and the regulations. Such person shall be registered as a dealer to purchase livestock for slaughter.

(d) Every person clearing or desiring to clear the buying operations of other registrants shall apply for registration as a market agency providing clearing services by filing a properly executed application, on forms furnished by the agency, and the bond as required in §§ 201.27 through 201.34.

§ 201.11 Suspended registrants; officers, agents, and employees.

Any person whose registration has been suspended or any person employed by or otherwise associated with such registrant who was responsible for or participated in the violation on which the order of suspension was based, may not register in his own name or in any

other manner within the period during which the order of suspension is in effect, and no partnership, firm or corporation in which any such person has a substantial financial interest may be registered during such period.

§ 201.17 Requirements for filing tariffs.

(a) *Schedules of rates and charges for stockyard services.* Each stockyard owner and market agency operating at a posted stockyard shall file with the regional supervisor, for the region in which they operate, a signed copy of all schedules of rates and charges and amendments thereto. The tariffs and amendments must be filed with the regional supervisor at least 10 days before their effective dates, except as provided in paragraphs (b) and (c) of this section. Each tariff and supplement shall set forth the effective date of the schedule, a description of the stockyard services rendered, the stockyard at which the schedule applies, the name and address of the stockyard owner or market agency, the kind of livestock covered by the schedule, and any rules or regulations which affect any rate or charge. Each schedule of rates and charges filed shall be designated by successive numbers. Each amendment to such schedule shall be numbered and shall designate the number of the schedule which it amends.

(b) *Feed charges.* When the basic tariff schedule provides for feed charges to be based on an average cost plus a specified margin, the filing and notice provisions contained in section 306(c) of the Act are waived. A schedule of the current feed charges based on average feed cost and showing the effective date shall be conspicuously posted at the stockyard at all times. Changes in feed charges may become effective two days after the change is posted at the stockyard.

(c) *Professional veterinary services.* The filing and notice provisions contained in section 306(a) of the Act are waived for a schedule of charges for professional veterinary services. A schedule of rates and charges for professional veterinary services rendered by a veterinarian at a posted stockyard shall be conspicuously posted by the stockyard owner or market agency at the stockyard at all times. The rates and charges and any changes thereto may become effective two days after the new schedule or amendment is posted at the stockyard.

(d) *Joint schedules.* If the same schedule is to be observed by more than one market agency operating at any one stockyard, one schedule will suffice for such market agencies. The name and business addresses of those market

agencies adhering to such schedule must appear on such schedule.

§ 201.68 Brand inspection: application for authorization, registration and filing of schedules, reciprocal arrangements, and maintenance of identity of consignments.

(a) *Application for authorization.* Any department or agency or duly organized livestock association of any State in which branding or marking of livestock as a means of establishing ownership prevails by custom or statute, which desires to obtain an authorization to charge and collect a fee for the inspection of brands, marks, and other identifying characteristics of livestock, as provided in section 317 of the Act, shall file with the Administrator an application in writing for such authorization. In case two or more applications for authorization to collect a fee for the inspection of brands, marks, and other identifying characteristics of livestock are received from the same State, a hearing will be held to determine which applicant is best qualified.

(b) *Registration and filing of schedules.* Upon the issuance of an authorization to an agency or an association, said agency or association shall register as a market agency in accordance with the provisions of § 201.10, except that no bond need be filed or maintained, and shall file a schedule of its rates and charges for performing the service in the manner and form prescribed by § 201.17.

(c) *Reciprocal arrangements.* Any authorized agency or association may make arrangements with an association or associations in the same or in another State, where branding or marking livestock prevails by custom or statute, to perform inspection service at stockyards on such terms and conditions as may be approved by the Administrator. Provided, that such arrangements will tend to further the purpose of the Act and will not result in duplication of charges or services.

(d) *Maintenance of identity of consignments.* All persons having custody at the stockyard of livestock subject to inspection shall preserve the identity of the consignment until inspection has been completed by the authorized inspection agency. Agencies authorized to conduct such inspection shall perform the work as soon after receipt of the livestock as practicable and as rapidly as is reasonably possible in order to prevent delay in marketing, shrinkage in weight, or other avoidable losses.

§ 203.17 Statement of general policy with respect to rates and charges at posted stockyards.

(a) Requests have been received from stockyard operators, market agencies, and livestock producers urging a reduction of rate regulation at posted stockyards. Their requests are based on the belief that competition among markets will set a level of rates and charges fair to both the market operator and to the livestock producer. Packers and Stockyards Administration will accept for filing tariffs containing any level of charges after ten (10) days notice to the public and to the Secretary as required by the Act.

(b) Packers and Stockyards Administration will not investigate the level of rates and charges established by stockyard owners and market agencies for reasonableness except upon receipt of a valid complaint or under compelling circumstances warranting such an investigation. Stockyard owners and market agencies will have substantial flexibility in setting their own rates and charges.

(c) Complaints filed about the reasonableness of rates and charges will be investigated to determine the validity of such complaints and appropriate action taken if warranted.

(d) Packers and Stockyards Administration will continue to insure that the schedules of rates and charges filed with the Department are applied uniformly and in a nondiscriminatory manner.

3. It is proposed to add a new statement of general policy § 203.18 to read as set forth below.

§ 203.18 Statement with respect to packers engaging in the business of custom feeding livestock.

In its administration of the Packers and Stockyards Act, The Packers and Stockyards Administration has sought to promote and maintain open and fair competition in the livestock and packing industries, and to prevent unfair or anti-competitive practices when they are found to exist. It is the opinion of the Administration that the ownership or operation of custom feedlots by packers presents problems which may, under some circumstances, result in violations of the Packers and Stockyards Act.

Packers contemplating entering into such arrangements with custom feedlots are encouraged to consult with the Administration prior to the commencement of such activities. Custom feedlots are not only places of production, but are also important marketing centers, and in connection with the operation of a custom feedlot, it

is customary for the feedlot operator to assume responsibility for marketing fed livestock for the accounts of feedlot customers. When a custom feedlot is owned or operated by a packer, and when such packer purchases fed cattle from that feedlot, this method of operation potentially gives rise to a conflict of interest. In such situations, the packer's interest in the fed livestock as a buyer is in conflict with its obligations to feedlot customers to market their livestock to the customer's best advantage. Under these circumstances, the packer should take appropriate measures to eliminate any conflict of interest. At a minimum, such measures should insure: (1) That feedlot customers are fully advised of the common ties between the feedlot and the packer, and of their rights and options with respect to the marketing of their livestock; (2) That all feedlot customers are treated equally by the packer/custom feedlot in connection with the marketing of fed livestock; and (3) That marketing decisions rest solely with the feedlot customer unless otherwise expressly agreed.

Packer ownership or operation of custom feedlots may also give rise to competitive problems in some situations. Packers contemplating or engaging in the business of operating a custom feedlot should carefully review their operations to assure that no restriction of competition exists or is likely to occur.

The Packers and Stockyards Administration does not consider the existence of packer/custom feedlot relationships, by itself, to constitute a violation of the Act. In the event it appears that a packer/custom feedlot arrangement gives rise to a violation of the Act, an investigation will be made on a case-by-case basis, and, where warranted, appropriate action will be taken.

[FR Doc. 82-12896 Filed 5-11-82; 8:45 am]
BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

[Rev. 9, Amt. 19]

Disaster Loans: Change in Policy

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises SBA's present home disaster loan regulations to prohibit the guarantee of loans which exceed SBA's administrative limits.

The above change is contemplated as a result of the serious adverse impact upon the nation's credit markets of Federal and federally-assisted borrowing. These borrowings have contributed to extremely high interest rates, the retarding of economic growth and disruption of financial markets.

DATE: Comments are to be received on or before June 11, 1982.

ADDRESS: Written comments are to be submitted in duplicate to the Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal may be directed to Bernard Kulik, telephone (202) 653-6879.

SUPPLEMENTARY INFORMATION: It is the responsibility of all homeowners to insure their homes, household contents and other personal property against all insurable hazards likely to occur in their locations. It is also prudent for each homeowner to periodically review existing hazard insurance policies and increase coverage whenever the cost to replace the insured property exceeds policy limits.

Direct home loans of up to \$50,000 are available to restore a homeowner's primary residence. Direct loans to repair or replace household goods and personal items are limited to \$10,000. A direct loan which combines the above purposes is limited to \$55,000.

In addition, up to \$50,000 may be available for refinancing of existing liens. A homeowner may qualify for direct loan assistance totaling \$105,000.

It is SBA's belief that direct loan assistance currently available to supplement a homeowner's hazard insurance proceeds is adequate to permit restoration in full of disaster inflicted damage.

It is contemplated that the gross amount of disaster loan funds which will be made unavailable to homeowner disaster victims will contribute toward a reduction in interest rates, and/or such funds may be utilized in other areas of the economy. The \$5,000 loan cancellation feature for disasters occurring between January 1, 1972 and April 20, 1973 has been deleted because it is obsolete.

Business loan regulations are also revised to incorporate both the \$500,000 statutory limit on total disaster loan assistance to any one business for any one disaster, and the exemption from this limit provided for a business which constituted a major source of employment in an area suffering a disaster.

For the purposes of Executive Order 12291, SBA hereby determines that this rule will not constitute a major rule.

In addition, it is hereby certified pursuant to Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that this rule will not have a significant economic impact on a substantial number of small entities. In this regard this rule affects only the applications of homeowners for SBA guaranteed disaster loan assistance, and, it merely sets forth statutory language with respect to businesses. Therefore, it does not have any economic impact upon small entities as defined in Section 601 of that Act, 5 U.S.C. 601.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Small businesses.

PART 123—DISASTER LOANS

§ 123.5 [Amended]

Accordingly, notice is given that, pursuant to the authority of Section 5(b)(6) of the Small Business Act, as amended, 15 U.S.C. 634(b)(5), § 123.5(a) of Chapter I of Title 13 of the Code of Federal Regulations is revised by removing subparagraph (4) in its entirety and revising subparagraphs (1) and (3) to read as follows:

(a) * * *

(1) SBA's share in a direct, immediate participation or guaranteed loan to any homeowner, including all members of the household, shall not exceed \$50,000 for repair or replacement of the land or building, and shall not exceed \$10,000 to repair or replace household goods and personal items: *Provided, however,* That SBA's share of any such loan or loans to repair or replace a home and household goods for any homeowner shall not exceed \$55,000 in the aggregate for any one disaster, excluding eligible refinancing in an amount not to exceed the lesser of the physical damage to the real property or the amount of loan made to repair such property. Persons living in a damaged home who are not dependents of the homeowner may also apply for disaster assistance for personal property loss, up to \$10,000.

(2) * * *

(3) The total of SBA's direct loans plus SBA's share of immediate participation and guaranteed loans to any one business concern for any one disaster may not exceed the statutory limit (\$500,000). In the case of a major source of employment in an area suffering a disaster, the Administration may waive the \$500,000 limitation. Applicants applying for such waiver shall be required to demonstrate to SBA's

satisfaction that applicant has used all funds from its own resources and from non-Federal credit available at reasonable interest rates and terms to alleviate the physical damage and/or economic injury sustained, plus eligible refinancing.

(Catalog of Federal Domestic Assistance Program No. 59008 (Physical Disaster Loans))

Dated: April 27, 1982.

James C. Sanders,
Administrator.

[FR Doc. 82-12970 Filed 5-11-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 17a

Centers for Industrial Technology

AGENCY: Office of Productivity, Technology and Innovation, Commerce.

ACTION: Proposed rule and request for comments.

SUMMARY: This document announces the intention of the Department of Commerce to substitute new procedures for the Cooperative Generic Technology Program under Pub. L. 96-480 (the Stevenson-Wydler Act) and the Administration's curtailment of grant funds for that Program. Like its predecessor, this new activity will assist the private sector in establishing cooperative activities, which will include the development of needed generic technologies—those that underlie a broad range of industries in instances where it is inappropriate for individual firms, acting alone, to do so. While these procedures provide for technical support by the Department of Commerce to the private sector in forming Centers for Industrial Technology, the initiative, management, and funding for these Centers is solely the responsibility of the private sector. No grant money will be available from the Department of Commerce.

DATES: Comments must be received on or before June 11, 1982.

ADDRESSES: Comments should be directed to: The Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Egils Milbergs, Director, Office of Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230, Telephone (202) 377-1581.

List of Subjects in 15 CFR Part 17a

Business and industry, Science and technology.

Dated: May 6, 1982.

Robert B. Ellert,

Acting Assistant Secretary for Productivity, Technology and Innovation.

Title 15 of the Code of Federal Regulations is hereby amended by revising Part 17a to read as follows:

PART 17a—CENTERS FOR INDUSTRIAL TECHNOLOGY

Sec.

- 17a.1 Purpose.
- 17a.2 Overview.
- 17a.3 Establishment of Centers.
- 17a.4 Workshops.
- 17a.5 Coordination/Cooperation with other Federal Agencies.
- 17a.6 Antitrust considerations.
- 17a.7 Submission of requests for assistance.
- 17a.8 Proprietary data.
- 17a.9 Advice in preparing requests for assistance.
- 17a.10 Amendment of procedures.

Authority: 15 U.S.C. 1512; sec. 2, 31 stat. 1449, as amended; sec. 1, 64 stat. 371 (15 U.S.C. 272); Reorg. Plan No. 3 of 1946, Part VI; Reorg. Plan No. 5 of 1950; Pub. L. 96-48, sec. 6.

§ 17a.1 Purpose.

The purpose of this part is to establish procedures under which the Department of Commerce will provide assistance for the establishment of Centers for Industrial Technology.

§ 17a.2 Overview.

(a) Section 6 of the Stevenson-Wydler Technology Innovation Act of 1980 authorizes the Secretary of Commerce to provide staff assistance for the establishment of Centers for Industrial Technology ("Centers"). Upon the request of an industry group or university wishing to establish such a Center, the Department of Commerce is authorized to provide staff advice and technical assistance. No funds are available from the Department of Commerce for the establishment of Centers.

(b) Among the activities which may be conducted by Centers are the following:

- (1) Research supportive of technological and industrial innovation including cooperative industry-university basic and applied research;
- (2) Assistance to individuals and small businesses in the generation, evaluation, and development of technological ideas supportive of industrial innovation and new business ventures;
- (3) Technical assistance and advisory services to industry, particularly small businesses; and

(4) Curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

§ 17a.3 Establishment of Centers.

Prior to providing staff assistance for the establishment of the private sector of a Center, the Secretary or his designate shall find that:

(a) Consideration has been given by the Center to the potential contribution of the activities proposed under the Center to productivity, employment, and economic competitiveness of the United States;

(b) A high likelihood exists of continuing participation, advice, financial support, and other contributions from the private sector;

(c) The host university or other nonprofit institution has a plan for the management and evaluation of the activities proposed within the particular Center, including the agreement between the parties as to the allocation of patent rights on a nonexclusive, partially exclusive, or exclusive license basis to and inventions conceived or made under the auspices of the Center; and

(d) Consideration has been given to any effects upon competition of the activities proposed under the Center.

§ 17a.4 Workshops.

Upon request, the Secretary may hold workshops with representatives from the private sector in order to further the objectives of this part. Notice of such workshops shall be published in the *Federal Register* and *Commerce Business Daily*, within a reasonable time before the workshop is to be held. Such notice shall state that the workshop is open to the public, and shall give its time and location.

§ 17a.5 Coordination/Cooperation with Other Federal Agencies.

While the Secretary is considering a request to provide staff assistance to establish a specific Center, it may become apparent that the request covers subjects that are of primary interest of another Federal agency(ies). In such a case, the Secretary will coordinate the request with the other agency or agencies. The Secretary also may seek cooperation from relevant Federal laboratories and agency programs that may be of assistance to Centers.

§ 17a.6 Antitrust Considerations.

(a) The Department of Commerce will offer no opinion on the antitrust merits of the formation of any Center. In those instances where a proposed Center meets the requirements stated in § 17a.3,

the Secretary may seek the Attorney General's opinion as to whether the proposed joint research activities of a Center would violate any of the antitrust laws.

(b) The *Antitrust Guide Concerning Research Joint Ventures*, published by the Department of Justice in November 1980 and for sale by the Superintendent of Documents, identifies certain behavior which could be construed as anticompetitive in the formation of joint research ventures, including:

- (1) Collateral restraints:
 - (i) Restrictions upon members' operational use of technical information or patents developed by the Center;
 - (ii) Restrictions upon independent research conducted by individual members; and
 - (iii) Restrictions upon the use, by individual members, of technology developed outside the Center.
- (2) Limitations upon access to the joint research venture or its results.

§ 17a.7 Submission of requests for assistance.

(a) Requests for staff assistance to be provided under this part should be directed to: Assistant Secretary for Productivity, Technology and Innovation, U.S. Department of Commerce, Washington, D.C. 20230.

(b) Requests for assistance under paragraph (a), above, should provide sufficient documentary evidence for the Secretary to make the required finding under § 17a.3.

§ 17a.8 Proprietary data.

All persons making a request under Section 17a.7 are cautioned that data submitted to the Department may be vulnerable to dissemination under the Freedom of Information Act. The Department would, however, withhold any information it deemed proprietary, on the basis of the provision of 5 U.S.C. 552(b)(4). The Department will consult with the submitter of any data requested under the Freedom of Information Act prior to the release of such information.

§ 17a.9 Advice in preparing requests for assistance.

Any person may request assistance from the Department in preparing a request under § 17a.7. If appropriate, the Department may hold a workshop, as provided for in § 17a.4, to facilitate this process.

§ 17a.10 Amendment of procedures.

(a) The Secretary may amend these procedures by publishing in the *Federal Register* a notice of proposed amendment. A thirty (30) day period will be allowed from the date of publication

for written comment by the public on the proposed amendment. Any amendment adopted shall be published in the *Federal Register*.

(b) If the Secretary finds for good cause that an amendment must be made in a shorter time period than required by this section, he may publish an interim amendment in the *Federal Register*, and at the same time, request comments as provided in paragraph (a) of § 17a.10.

[FR Doc. 82-12860 Filed 5-11-82; 8:40 am]

BILLING CODE 3510-18-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 260

[Docket No. RM82-23-000]

Revision of Report by Natural Gas Pipeline Companies on Service Interruptions Occurring on the Pipeline System

Issued: May 5, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 6, 1982, the Commission issued a notice of proposed rulemaking (47 FR 16644, April 19, 1982) which would revise its regulations relating to the reporting by natural gas companies of emergencies affecting companies' service or facilities. The revisions will improve the Commission's ability to perform its responsibilities with respect to assuring the adequacy and continuity of service of the companies that it regulates. At the request of the American Gas Association, Additional time is being granted for the filing of comments.

DATE: Comments are due May 18, 1982.

ADDRESS: Comments on this Notice should be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should reference Docket No. RM82-23-000.

FOR FURTHER INFORMATION CONTACT: Mark A. Greenwald, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Room 6300-O, Washington, D.C. 20426, (202) 357-5789. Kenneth F. Plumb, Secretary.

[FR Doc. 82-12833 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. R-82-984]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 24 CFR Part 115 which provides for recognition by the Department of those State and local fair housing laws which provide rights and remedies substantially equivalent to those provided by Title VIII of the Civil Rights Act of 1968. The purpose of this proposed rule is to add additional jurisdictions to an existing list of recognized State and local agencies which the Department has found to be substantially equivalent.

DATE: Comment Due Date: June 11, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. The rule may be changed on the basis of comments received.

FOR FURTHER INFORMATION CONTACT: Steven J. Sacks, Director, Federal, State and Local Programs Division, Room 5214, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, (202) 426-3500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This Department is proposing to grant recognition to the fair housing laws of additional jurisdictions, pursuant to section 810(c) of Title VIII of the Civil Rights Act of 1968, as amended. The evaluation of the laws of these jurisdictions was conducted in accordance with the provisions of 24 CFR Part 115, with particular focus on §§ 115.2(a), 115.3 and 115.8. Those sections are set forth to give appropriate information to all parties with an interest in HUD's proposed action.

Section 115.2 Procedures for Recognition provides in (a): Recognition

- (1) Refusal to sell or rent.
- (2) Refusal to negotiate for a sale or rental.
- (3) Making a dwelling unavailable.
- (4) Discriminating in terms, conditions, or privileges of sale or rental, or in the provisions of services or facilities.
- (5) Advertising in a discriminatory manner.
- (6) Falsely representing that a dwelling is not available for inspection, sale or rental.
- (7) Blockbusting.
- (8) Discrimination in financing.
- (9) Denying a person access to or

The Department is limiting the public comment period to 30 days. This is necessary in order to expedite the equivalency recognition process, so that the listed agencies may be recognized in time to be eligible to receive Fair Housing Assistance Program funding. Interested persons and organizations may on or before June 11, 1982, file written comments on the proposal. If after evaluating any comments so received, the Assistant Secretary for

States

Montana

Localities

New Haven, Connecticut
Jacksonville, Florida
St. Petersburg, Florida
Bloomington, Illinois
Evanston, Illinois
Springfield, Illinois
Columbus, Indiana
Gary, Indiana
South Bend, Indiana
Iowa City, Iowa
Salina, Kansas
Wichita, Kansas
Howard County, Maryland

Prince George's County, Maryland
Kansas City, Missouri
Mecklenburg County, North Carolina
New Hanover County, North Carolina
Knoxville, Tennessee
Beckley, West Virginia
Huntington, West Virginia
Beloit, Wisconsin

(Sec. 810(c) of the Civil Rights Act of 1968, 42 U.S.C. 3610; Sec. 234 of the Housing and Community Development Amendments of 1978)

Dated: April 19, 1982.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 82-12866 Filed 5-11-82; 8:45 am]

BILLING CODE 4210-28-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 204, 207, 213, 220, 221 and 232

[Docket No. R-82-977]

Issue Date of Debentures

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: In view of the fact that numerous mortgagees are unable to effect an assignment within the requisite 30 day period under existing regulations, the additional period provided in this proposal bestows an additional benefit upon such mortgagees. These proposed amendments provide for a change in the issue date of debentures which are issued in connection with the settlement of coinsurance, conveyed property, and assigned mortgage claims. A change in the definition of the date of a covenant default is also provided. The proposal would apply only to debentures issued on or after the effective date of the final rule.

DATE: Comment Due Date: July 12, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Comments should refer to the above docket number and title. A copy of each

comment submitted will be available for public inspection and copying during regular business hours at the above address. The Proposed Rule may be changed on the basis of comments received.

FOR FURTHER INFORMATION CONTACT: Shirley A. Evans, Acting Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2202, Washington, D.C. 20410, (202) 755-6310. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The proposed amendments to the single family regulations require that debentures issued under the provisions of 24 CFR 203.410(a) (conveyed properties) be dated as of the later of: The date of default or the first day of the month next following the date on which an allowance for mortgage interest terminates under 24 CFR 203.402a; that debentures issued under the provisions of 24 CFR 204.351 be dated as of the first day of the month next following the date on which payment of insurance benefits occurred; and that debentures issued under the provisions of 24 CFR 203.410(b) and 203.486 (assigned mortgages) be dated as of the first day of the month next following the date of assignment and mature 20 years thereafter. In addition, in the above single family conveyance, assignment and coinsurance cases, there would be included a cash payment made to the lender in an amount equivalent to the debenture interest which would have been earned from the date on which an allowance for mortgage interest was terminated under § 203.402a (conveyance cases); from the date the mortgage was assigned (assignment cases) and from the date on which payment of insurance benefits occurred (coinsurance cases) to the date of the debenture. This is in addition to the cash adjustment otherwise provided in § 203.411 (amended and redesignated herein as § 203.411(a)) of this chapter.

The proposed amendments to the multifamily regulations require that assignments under 24 CFR 207.258(b), 213.270(c), 220.821, 232.880 and 221.255(d) (a single family regulation) take place the first day of the first or second month (or the first of such later month as may be approved by the Commissioner in writing) following the date of the filing of the notice of intention to exercise the assignment option. Multifamily regulations which are not specifically cited herein are covered by these provisions through incorporation by reference.

In view of the fact that numerous mortgagees are unable to effect an

assignment within the requisite 30 day period under existing regulations, the additional period provided in this proposal bestows an additional benefit upon such mortgagees. The proposal would apply only to debentures issued on or after the effective date of the final rule.

Under existing multifamily regulations, debentures issued in payment of a claim are dated as of the date of default (which, in monetary default cases, is always the first of the month); however, debentures issued in cases involving a covenant default (which could occur any day of the month) must be dated as of the date of default. The provisions of 24 CFR 207.255(d) have been amended to provide that the date of a covenant default be the first day of the month next following the date of the first uncorrected failure to perform a covenant or obligation. The net effect of these proposed amendments is to reduce the number of issue and maturity dates from a possible 365 to 12 annually.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This rule was listed as item C) 14.(H-24-81) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.115, 14.117, 14.118, 14.119, 14.121, 14.122, 14.127, 14.129, 14.134, 14.135, 14.137, 14.139, and 14.161.

List of Subjects:**24 CFR Part 203**

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvements, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, Chapter II is proposed to be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

Subpart B—Contract Rights and Obligations

1. Section 203.410 would be revised to read as follows:

§ 203.410 Issue date of debentures.

(a) *Conveyed properties.* Where the property is conveyed to the Commissioner, debentures shall be dated and issued as of the later of:

(1) The Date of default as defined in this part or

(2) The first day of the month next following the date on which an allowance for mortgage interest terminates under § 203.402a.

(b) *Assigned mortgages.* Where the mortgage is assigned to the Commissioner, debentures shall be dated and issued as of the first day of the month next following the date of the assignment.

2. Section 203.411 would be revised to read as follows:

§ 203.411 Cash adjustment.

A check shall be issued to the mortgagee in payment of:

(a) Any difference of less than \$50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim as approved by the Commissioner.

(b) An amount equivalent to the debenture interest from the date on which an allowance for mortgage interest terminates under § 203.402a to the date of the debentures.

(c) An amount equivalent to the debenture interest from the date of assignment of the mortgage to the date of the debentures.

3. Section 203.486 would be revised to read as follows:

§ 203.486 Issue date of debentures.

The debentures shall be dated and issued as of the first day of the month next following the date of the assignment of the loan.

4. Section 203.487 would be revised to read as follows:

§ 203.487 Cash adjustment.

A check shall be issued to the mortgagee in payment of:

(a) Any difference of less than \$50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner.

(b) An amount equivalent to the debenture interest from the date on which an allowance for mortgage interest terminates under § 203.402a to the date of the debentures.

(c) An amount equivalent to the debenture interest from the date of assignment of the mortgage to the date of the debentures.

PART 204—COINSURANCE

Subpart B—Contract Rights and Obligations

5. Section 204.350 would be revised to read as follows:

§ 204.350 Debentures.

All of the provisions of §§ 203.405 through 203.409 and § 203.411(a) of this chapter shall apply to mortgages insured under this subpart, except that the debentures shall bear interest at the rate in effect on the effective date of the Mortgage Insurance Certificate.

6. Section 204.351 would be revised to read as follows:

§ 204.351 Issue date of debentures.

The debentures shall be dated and issued as of the first day of the month next following the date on which payment of insurance benefits occurs. A check shall be issued to the mortgagee in payment of an amount equivalent to the debenture interest from the date on

which payment of insurance benefits occurs to the date of the debentures.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart B—Contract Rights and Obligations

7. Section 207.255 paragraph (d) (1) would be revised to read as follows:

§ 207.255 Defaults.

* * * * *

(d) * * *

(1) The first day of the month next following the date of the first uncorrected failure to perform a covenant or obligation; or

* * * * *

8. The introductory text of § 207.258 (b) would be revised to read as follows:

§ 207.258 Insurance claim requirements.

* * * * *

(a) * * *

(b) Assignment of mortgage to Commissioner. If the mortgage elects to assign the mortgage to the Commissioner, it shall, on the first day of the first or second month following the date of the notice of such election, or on the first of such later month as may be approved by the Commissioner in writing, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. For purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. In addition, the following requirements shall be met:

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart B—Contract Rights and Obligations—Projects

9. The introductory text of § 213.270 (c) would be revised to read as follows:

§ 213.270 Supplementary loans; election of action; claims; debentures.

* * * * *

(c) Items to be filed on submitting claim. For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the

first day of the month for purposes of issuance of debentures. On the first day of the first or second month following the filing of the notice of intention to file claim, or on the first of such later month as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart D—Contract Rights and Obligations—Projects

10. The introductory text of § 220.821 would be revised to read as follows:

§ 220.821 Items to be filed on submitting claim.

For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. On the first day of the first or second month following the filing of the notice of intention to file claim, or on the first of such later month as may be agreed upon by the Commissioner in writing, the lender shall file with the Commissioner:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart B—Contract Rights and Obligations—Low Cost Homes

11. Section 221.255 paragraph (d) would be revised to read as follows:

§ 221.255 Assignment option.

(d) The debentures issued pursuant to the exercise of an assignment option shall be dated and issued as of the date the mortgage is assigned to the Commissioner which shall be the first day of the first or second month (or the first of such later month as may be approved by the Commissioner in writing) following the date of the filing of the notice of intention to exercise the assignment option. For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. The

debentures shall mature 10 years after the date of issuance.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart D—Contract Rights and Obligations

12. The introductory text of § 232.880 would be revised to read as follows:

§ 232.880 Items to be delivered on submitting claim.

For the purposes of this section, if the first day of the month falls on a weekend or a holiday, the assignment shall be recorded on the first business day thereafter, with the assignment being deemed to have been made on the first day of the month for purposes of issuance of debentures. On the first day of the first or second month following the filing of the notice of intention to file claim, or on the first day of such later month as may be agreed upon by the Commissioner in writing, the lender shall deliver to the Commissioner:

(Sec. 211 of the National Housing Act (12 U.S.C. 1701 et seq.); Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)))

Dated: April 5, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 82-12884 Filed 5-11-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 411]

Chalk Hill Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Sonoma County, California, approximately eight miles north of Santa Rosa, to be known as "Chalk Hill." This proposal is based upon a petition submitted by seven industry members in the area. Although the petitioners propose that the area be known as "Sonoma Chalk Hill," ATF is proposing the alternate appellation, "Chalk Hill." The establishment of

viticultural areas and their subsequent use as appellations of origin in wine labeling and advertising will allow wineries to better designate the specific grape-growing areas where their wines come from and will enable consumers to better identify the wines they purchase.

DATES: Written comments must be received by July 12, 1982.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385, [Notice No. 411].

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at the ATF Reading Room, Room 4405, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jim Whitley, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations provide for the establishment of definite American viticultural areas and allow for their use as appellations of origin on wine labels and in wine advertisements. The American viticultural areas are listed in 27 CFR Part 9.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be

found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area of approximately 27 square miles, located in Sonoma County eight miles north of Santa Rosa, as a viticultural area requested by the petitioners to be known as "Sonoma Chalk Hill." Currently, there are more than 1,000 acres of producing vineyards and two producing wineries in the proposed area.

The petitioners claim that the proposed viticultural area is distinguished from surrounding areas by historical reference, climate, soil type, geographical and physical features. The petitioners base these claims on the following:

a. Use of the county name "Sonoma" as part of the viticultural area name will help consumers identify the wine from the petitioned area as being from Sonoma County and not from another political sub-division also known for wine production. The wine and grape-growing history of the proposed area follows closely that of Sonoma County.

b. Sonoma County has historically been known for its wine production. By the 1880's, Sonoma wines were receiving awards at expositions in the U.S. and abroad.

c. The area within the boundaries of the proposed viticultural area is known locally as "Chalk Hill" and takes its name from the hill of the same name located within the proposed areas.

d. Cultivation of grapes in Sonoma County began with the founding of Sonoma Mission in 1824. By 1855, grapes were being cultivated at Windsor, the principal town closest to the proposed area. By the mid 1890's, there were a half dozen wineries located in the Windsor area and 43 vineyardists farming 1,038 acres of grapes.

e. Reference in the *Historical Atlas Map of Sonoma County* (1877) documents vineyards at seven different locations of the Chalk Hill area.

f. References are made by long time residents in the Chalk Hill area to a Chisholm winery located on Chalk Hill Road which operated long before Prohibition. This winery operated at least until World War II since it is listed in the 1937 *Directory of American Wineries*.

g. References are also made to the Tarwater Winery in the southeast of the Chalk Hill area. The Tarwater Farm is

shown on the 1877 *Atlas Map of Sonoma County*.

h. The proposed area is distinguished by a micro-climate with a marine influence. Based on the University of California heat summation scale, temperatures range from Region I, less than 2,500 degree days, to Region II, 2,501 to 3,000 degree days. Most of the area's vineyards lie within a zone comprised of thermal belts which protect them from damaging spring frost.

i. The climate of the proposed area is influenced by the location of Mount St. Helena in relation to the mouth of the Russian River and San Pablo Bay. The atmospheric conditions created by the relationship of these physical features results in a "September" vineyard area. This means that the harvests are usually completed by the end of September even for late-ripening grape varieties which are not normally harvested until October in surrounding areas. The proposed area is warmer than the greater Russian Valley and cooler than Alexander Valley and Dry Creek Valley.

j. The proposed Chalk Hill area is different from the surrounding areas of Alexander Valley, Dry Creek Valley and the Russian River Valley. Surveyors advise that public and professional perception of a valley is the valley floor itself. The vineyards of the Chalk Hill area are planted on lands which are gently rolling to steep and can be described as bench-lands, table-lands and hills. Many vineyards planted on the steeper slopes are contoured and terraced. Therefore, it is not correct to label a wine as being from a "valley" viticultural area unless the grapes are grown at the lower tillable elevation. A wine from grapes produced in one area will have some of the qualities of wine made from the same type of grape from each of the other areas, but it will also have qualities which are different.

k. The average annual rainfall in the proposed area is approximately 36 inches, almost all of which occurs between November 1 and March 31.

l. The proposed area is distinguished by "white" soil. The soils range from sandy to silt loam, clay and quartzite and are high in volcanic ash ("white" soil) deposited as a result of the volcanic activity of Mount St. Helena. The vineyards in the area are planted in deep soils but ones which are lower in fertility. This soil contributes to the high quality of the fruit produced by those vineyards.

m. The elevation of over 95% of the land in the proposed area ranges from 200 feet to about 1,330 feet compared with elevations on the floor off the Russian River Valley of about 100 feet. The predominant vineyard plantings in

the area are at elevations ranging from 200 feet to 800 feet.

The boundaries of the proposed Chalk Hill viticultural area may be found on two U.S.G.S. 7.5 minute quadrangle maps, (Mark West Springs Quadrangle California and Healdsburg Quadrangle California).

The boundaries, as proposed by the petitioners, are described in proposed § 9.52.

Executive Order 12291

It has been determined that this notice of proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of \$100 million dollars or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not expected to apply to this proposed rule because the proposal, if promulgated as a final rule, is not expected to have a significant economic impact on a substantial number of small entities. Since the benefits to be derived from using a new viticultural area appellation of origin are intangible, ATF cannot conclusively determine what the economic impact will be on the affected small entities in the area. However, from the information we currently have available on the proposed Chalk Hill viticultural area, ATF does not feel that the use of this appellation of origin will have a significant economic impact on a substantial number of small entities.

Viticultural Area Name

ATF has reservations regarding the use of the county name, "Sonoma", in the appellation "Sonoma Chalk Hill" as the petitioners propose. While the petition documents the wine and grape-growing history of Sonoma County and states that the history of the "Chalk Hill" area closely follows that of the county, it does not sufficiently establish that the proposed area is known either locally or nationally as "Sonoma Chalk Hill." The petitioners have indicated

that their purpose for including the name of the county in the viticultural area is to inform the consumers that the Chalk Hill area is in Sonoma County. This identification could be achieved by placing "Sonoma County" on the label. In addition, ATF is concerned that consumers will confuse the "Sonoma Chalk Hill" appellation with the "Sonoma Valley" appellation, another proposed viticultural area in the county.

ATF, therefore, proposes that this viticultural area be known as "Chalk Hill." The petition supports this appellation. The Chalk Hill, located on the north boundary line, and the Chalk Hill Road, which runs north and south through the center of the proposed area, can be seen on the U.S.G.S. 7.5 minute map, Healdsburg Quadrangle California. The petitioners also state that the area is known locally as "Chalk Hill."

Viticultural Area Boundaries

ATF has noted that the proposed boundary lines for the Chalk Hill viticultural area depicted in § 9.52(a) (9) and (10) overlap into the proposed Alexander Valley viticultural area by a triangular strip of land, 550 feet at its widest point. In addition, the proposed Russian River Valley viticultural area includes all of the proposed Chalk Hill area except for that area which overlaps into the Alexander Valley viticultural area.

Public Participation—Written Comments

ATF requests interested persons to submit comments regarding this proposed viticultural area. Although this notice proposes possible boundaries for the Chalk Hill viticultural area, comments concerning other possible boundaries for this viticultural area will be considered as well. ATF is also particularly interested in comments regarding the viticultural area name and comments regarding the overlapping boundaries.

Since the petitioner has included in this petition an area that would overlap into the proposed Alexander Valley viticultural area and since the proposed Chalk Hill viticultural area would be totally within the proposed Russian River Valley viticultural area, ATF is particularly interested in receiving historical or current evidence that would substantiate that the subject overlapping areas have been historically or are currently known by both the other proposed viticultural area names. How should the boundaries be modified to eliminate the overlapping areas in absence of sufficient historical or current evidence?

All pertinent comments will be considered prior to the proposal of final

regulations. Comments are not considered confidential. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should make a request, in writing, to the Director within the 60-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine whether a public hearing will be held.

Drafting Information

The principal author of this document is Joan Deerwester, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau also participated in preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority in 27 U.S.C. 205 (49 Stat. 981, as amended), ATF proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.52 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.52 Chalk Hill

Para. 2. Subpart C is amended by adding § 9.52 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.52 Chalk Hill.

(a) *Name.* The name of the viticultural area described in this section is "Chalk Hill".

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Chalk Hill viticultural area are the U.S.G.S. maps titled:

"Mark West Springs Quadrangle, California", 7.5 minute series, 1958; and "Healdsburg Quadrangle, California", 7.5 minute series, 1955 (Photorevised 1980).

(c) *Boundaries.* The Chalk Hill viticultural area is located near the town of Windsor in Sonoma County, California.

(1) Beginning at the far southwestern corner of the area, on the "Healdsburg" quadrangle map, at the intersection of the county road, Arata Lane, with old U.S. Highway 101; thence running east along the south line of Section 2, Section 1 and Section 6 to the point of intersection with the Pacific Gas and Electric power line;

(2) Thence following the power line southeasterly to its intersection with Pool Creek; thence following Pool Creek south downstream to its intersection with the west line of Section 17; thence south along the section line to its meeting with the south line of Section 17;

(3) Thence following the south line of Section 17 east to its meeting the east line of Section 17;

(4) Thence continuing north on the east section line through Section 17 and into Section 8 to its intersection with Leslie Road;

(5) Thence following Leslie Road northeast to its intersection with the common section line between Sections 9 and 10;

(6) Thence southeast in a straight line crossing Section 10 and continuing to the junction of a drainage (running North) with the major creek known as Mark West Creek in the southwest corner of Section 11; thence 600 feet northeast in a straight line to its intersection with the Porter Creek Road, the point of intersection lies 800 feet north of the south line of Section 11 and 950 feet east of the west line of Section 11;

(7) Thence northeasterly along Porter Creek Road to its junction with Franz Valley Road; thence northeasterly, northerly, and northwesterly following Franz Valley Road to its intersection with Franz Creek (this intersection bears from the Northeast corner of Section 25, approximately west 2,030 feet and north 1,150 feet from this section corner); thence following Franz Creek downstream in a northwesterly direction to its intersection with the common line of Sections 21 and 22;

(8) Thence south along the section line to the southeast corner of Section 21;

(9) Thence west following the south line of Section 21 and continuing west as the south line of Section 20 and along a

straight line to its intersection with Chalk Hill Road;

(10) Thence southwest along this road 550 feet;

(11) Thence northwesterly in a straight line intersecting the top of Chalk Hill and extending in a straight line 2,850 feet to its intersection with the Russian River; thence westerly and northwesterly along the Russian River 5,200 feet, to the point on the west bank of the northerly terminus of an unnamed road (known locally as Grant School Road);

(12) Thence following this road southeasterly and southwesterly to its intersection with the Pacific Gas and Electric power line;

(13) Thence continuing southwest from this point in a straight line to the point of beginning.

Signed: March 9, 1982.

G. R. Dickerson,
Director.

Approved: April 6, 1982.

John M. Walker, Jr.,
Assistant Secretary, Enforcement and Operations.

[FR Doc. 82-12801 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-022]

Hazard Communication; Public Hearings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of proposed rulemaking; modification of hearing notice.

SUMMARY: On March 19, 1982, OSHA Published a notice of proposed rulemaking (NPRM) on hazard communication in the *Federal Register* (47 FR 12092). A notice announcing dates and locations for public hearings on the NPRM was published on April 16, 1982 (47 FR 16348).

The locations announced for the hearings were Washington, D.C., Houston, San Diego and Detroit. The selection of these sites was based primarily on geographical considerations. Interested parties have since suggested that participation on the West Coast could be significantly increased by moving the hearing site there from San Diego to Los Angeles. OSHA has agreed to this suggestion and is hereby announcing that the hearing

originally scheduled for San Diego on July 20, 1982, will take place instead in Los Angeles at the address indicated below. The other hearings will take place on the dates and at the locations announced in the April 16th notice at 47 FR 16348. The hearings will be conducted in accordance with the procedures specified in the March 19th NPRM at 47 FR 12119.

In order to allow interested parties more opportunity to decide to participate in the regional hearings, OSHA is also hereby extending the time for submission of notices of intention to appear and statements for these regional hearings. Notices and statements for participants in the Washington, D.C. hearing are still due May 18, 1982, and June 1, 1982, respectively.

DATES: Notices of intention to appear at the regional hearings must be received on or before June 15, 1982. Statements and any documentary evidence to be presented at these hearings must be submitted by July 1, 1982.

The date each hearing will begin and the cities in which they will be held are as follows:

Date hearing begins	City
1. June 15, 1982	Washington, D.C.
2. July 13, 1982	Houston, Texas.
3. July 20, 1982	Los Angeles, California.
4. July 27, 1982	Detroit, Michigan.

ADDRESSES: Notices of intention to appear at the hearings, statements and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3635, Washington, D.C. 20210, (202) 523-8024.

The address for the hearing on July 20, 1982 is:

Santa Barbara (A) Room, Western Bonaventure Los Angeles Hotel, Fifth and Figueroa Streets, Los Angeles, California.

Notices of intention to appear at the public hearings, as well as any other information gathered by the Agency during this rulemaking, will be available for inspection and copying in the Docket Office. Docket H-022, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room S6212, Washington, D.C. 20210; (202) 523-7894.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3635, Washington, D.C. 20210; (202) 523-8024.

Proposal: Ms. Jennifer Silk, Office of Special Standards, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3663, Washington, D.C. 20210; (202) 523-7166.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 6(b), 8(c) and 8(g), Pub. L. 91-596, 84 Stat. 1593, 1599, 1600; 29 U.S.C. 655, 657; 29 CFR Part 1911; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 10th day of May 1982.

Thorne G. Auchter,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 82-12875 Filed 5-10-82; 12:03 pm]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 221 and 231

Oil and Gas Operating Regulations Operating Regulations for Exploration, Development, and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing operating regulations for both oil and gas and exploration, development, and production of solid minerals other than coal, to facilitate operations for tar sand development under the Combined Hydrocarbon Leasing Act of 1981. The objective is to provide procedures for a wide variety of operational methods with the least regulatory burden.

DATES: Comments on this proposed rulemaking must be received by June 11, 1982.

ADDRESS: Comments may be mailed to: Mr. Andrew V. Bailey, Acting Chief, Minerals Management, Minerals Management Service, National Center, Mail Stop 656, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Daniels, (703) 860-7535, (FTS) 928-7535, Mr. James J. Travis, (703) 860-7506, (FTS) 928-7506, or Mr. Stephen H. Spector, (703) 860-6259, (FTS) 928-6259.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Mr. Gerald R. Daniels, Chief, Branch of Fluid Minerals Management; Mr. James W. Hager,

Office of the Deputy Minerals Manager—Oil Shale, Grand Junction, Colorado; and Mr. Stephen H. Spector, Branch of Onshore Rules and Procedures, assisted by the Office of the Solicitor.

The Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070) (Act) amends the Mineral Lands Leasing Act of 1920 (30 U.S.C. 181 et seq.) by redefining oil to include all nongaseous hydrocarbons except coal, oil shale, and gilsonite (including all vein-type solid hydrocarbons), and by establishing a competitive leasing system for combined hydrocarbon leases in designated areas. Some such areas were designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077). The Act allows holders of Federal oil and gas leases existing as of November 16, 1981, and valid mining claims to any hydrocarbon resources leasable under section 17 of the Mineral Lands Leasing Act which were filed prior to January 21, 1926, in these Special Tar Sand Areas, to convert those leases or mining claims to combined hydrocarbon leases. The Act requires that the Secretary of the Interior promulgate regulations governing such conversions within 6 months of the Act's effective date of November 16, 1981. These proposed regulations provide cross references to both the new authority and the conversion regulations that will be administered by the Bureau of Land Management (BLM), and revise the definition of oil so that proposed plans of operation and actual exploration and development may be regulated under the rules administered by the Minerals Management Service (MMS).

Under the regulations proposed by the BLM and the previously established division of responsibilities within the Department of the Interior, the MMS will have specific responsibility to approve operating plans prior to the conversion of existing leases and/or valid mining claims to combined hydrocarbon leases, and to supervise operation on such newly issued leases. This rulemaking is designed to provide regulatory authority for both requirements with the least actual regulatory burden by utilizing existing rules for both mining and oil field operations.

The proposed conversion regulations which would be administered by the BLM (43 CFR Part 3140) provide for the approval of a plan of operations by the MMS prior to conversion. The content of these plans is already governed by the regulation in 30 CFR Part 231. In

addition, through cross reference, those proposals for in situ operations involving drilling similar to conventional oil field exploration and production are referred to 30 CFR Part 221. By this means, an applicant wishing to propose an operation which would be basically borehole drilling, would be referred to the drilling regulations for the type of information needed in a plan. Plans currently submitted under Part 231 vary greatly depending on the specific mineral being developed, the geology of the site, as well as geographic and special surface conditions. Plans submitted for approval under 30 CFR Part 231 currently cover minerals as different as oil shale on public lands or silica sand or uranium on acquired or Indian lands. The amount of specificity and documentation to render all plans acceptable varies greatly under the regulation now in use.

The Mining Supervisor shall advise the applicant and the BLM as to the initial completeness of the operating plan and the nature of any required additional information. Following review and ultimate determination of acceptability of the plan, the Supervisor shall notify the authorized officer of the BLM and forward any specific stipulations which should be included in the lease. Since this process is similar to established practice, it has not been deemed necessary to establish a separate part within the regulations to govern operations for tar sand exploration and development. Specific comments are requested concerning this decision not to promulgate a new part for tar sand operations and development.

Parts 221 and 231 already contain comprehensive information collection and recordkeeping requirements. These existing requirements will simply be applied to mining and/or drilling operations for tar sand recovery. Requests for approval of existing information collection and recordkeeping requirements have been prepared to obtain Office of Management and Budget approval under the Paperwork Reduction Act of 1980. It should not be necessary to obtain separate approval for this rulemaking since no expansion is contemplated of the basic provisions requiring information from lessees.

It is hereby determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy

Act of 1969 (43 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. The Department has also certified that this rulemaking will not have a significant economic impact on a substantial number of small entities; thus, a small entity flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96-354) is not required.

List of Subjects:

30 CFR Part 221

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 231

Environmental protection, Government contracts, Mineral royalties, Public lands-mineral resources, Mines, Reporting and recordkeeping requirements.

Under the authority of the Act of February 25, 1920 (30 U.S.C. 189), and the Act of November 16, 1981, Pub. L. 97-78 (95 Stat. 1070), it is proposed to amend Parts 221 and 231, Chapter II, Title 30 of the Code of Federal Regulations as set forth below:

PART 221—OIL AND GAS OPERATING REGULATIONS

1. Part 221 is amended by amending the Authority citation to include the following additional citation:

Authority: * * * and the Combined Hydrocarbon Leasing Act of November 16, 1981 (Pub. L. 97-78, 95 Stat. 1070).

2. Section 221.2 is amended by revising paragraph (p) to read as follows:

§ 221.2 Definitions.

* * * * *

(p) *Oil*. Any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand. Hydrocarbon extraction from tar sand is also governed by the regulation at 30 CFR Part 231.

PART 231—OPERATING REGULATIONS FOR EXPLORATION, DEVELOPMENT, AND PRODUCTION

3. Part 231 is amended by amending the Authority citation to include the following additional citation:

Authority: * * * and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78, 95 Stat. 1070).

4. Section 231.1 is amended by revising paragraph (a) and the cross reference at the end of the section to read as follows:

§ 231.1 Scope and purpose.

(a) The regulations in this part shall govern operations for the discovery, testing, development, mining, and processing of all minerals under leases or permits issued for Federal lands pursuant to the regulations in 43 CFR Group 3500 or Part 3140 and of all minerals (except coal, oil, and gas) on tribal and allotted Indian lands leased pursuant to the regulations in 25 CFR Parts 171, 172, 173, 174, and 176. For operations involving the extraction of hydrocarbon from tar sand or oil shale by in situ methods utilizing boreholes or wells the regulations in 30 CFR Part 221 also apply.

Cross Reference: See Part 211 of this chapter for regulations governing operations under coal permits and leases. See Part 221 of this chapter for regulations governing operations under oil and gas, or combined hydrocarbon leases and operations for the extraction of hydrocarbon from tar sand and oil shale by in situ or other methods utilizing boreholes or wells.

Dated: April 8, 1982.

Daniel N. Miller, Jr.,
Assistant Secretary of the Interior.

[FR Doc. 82-12892 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-MR-M

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property Solicitations to Postal Employees by Mail or Telephone

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Existing postal regulations prohibit soliciting, electioneering, advertising and similar activity on postal premises. The Postal Service believes the prohibition applies whether or not the person engaging in the activity is physically present on those premises. However, we propose to amend the regulations to make it

unambiguously clear that the prohibition includes such activity when carried out by telephone or by mail directed to postal employees on postal premises.

DATE: Comments must be received on or before June 11, 1982.

ADDRESS: Written comments should be addressed or delivered to Law Department, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Room 9012, Washington, DC 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m. at the same location.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 245-4584.

SUPPLEMENTARY INFORMATION: Existing Postal Service regulations which govern conduct on postal property generally prohibit soliciting, electioneering and similar activity on postal premises. Section 232.1 paragraph (h) of 39 CFR provides in pertinent part:

Soliciting, Electioneering, Collecting Debts, Vending, and Advertising. Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, commercial soliciting and vending, and displaying or distributing commercial advertising on postal premises are prohibited * * *

The Postal Service considers that § 232.1(h), as properly interpreted, applies to soliciting, electioneering and the other listed activities when conducted on postal property by means of mail or telephone calls directed to postal employees working on that property, even though the person engaging in the prohibited acts is not physically present. The language of § 232.1(h), however, does not provide unambiguous notice of this interpretation. It is proposed to amend Part 232 to add a new subparagraph which will make it clear that paragraph (h) applies to these activities.

We think it particularly appropriate to propose this provision at this time since, by notice of rulemaking published elsewhere in this issue, the Postal Service is adopting amendments to its regulations on the release of information to reflect the procedures developed to implement the decision of the U.S. District Court for the Northern District of Texas that the Freedom of Information Act requires the disclosure of lists of employees working at particular postal facilities. *National Western Life Insurance Co. v. United States*, 512 F.Supp. 454 (N.D. Tex. (1980)).

The requests we have received for lists of this nature have been submitted almost exclusively by insurance companies, and we think it reasonable

to infer that they are in many instances being sought for use in commercial solicitation. The proposed amendment would guard against the attempted conduct of such activity on postal property and in so doing would complement the long-standing Postal Service policy against the receipt by its employees of personal mail at their work locations. For the general information of the public, we reprint here a statement of that policy as it currently appears in section 424.14 of the Postal Operations Manual, an administrative manual governing the internal operations of mail-handling facilities.

424.14 Handling of Employees' Personal Mail Addressed to Their Work Location.

.141 *Policy.* Postal employees must not receive personal mail at their place of employment. Mail addressed to an employee at any postal facility's address is generally considered to be addressed to and intended for the Postal Service rather than the employee.

.142 *Personal Mail to Employee.* Any item of mail addressed to an employee at a postal facility's address, which is known or appears to be intended for the employee personally, may be refused, but must not be opened. (See 424.144.)

.143 *Mail to Employee in an Official Capacity.* Any item of mail addressed to an employee at a postal facility's address, which is known or appears to be intended for the Postal Service or for the employee in his or her official capacity, may be opened by the Postal Service, without the employee's knowledge or consent, after it is delivered to that facility. (See 424.144.)

.144 *Exceptions.*

a. Official USPS mail or circulars and other mail or circulars that appear to relate to postal employment (such as mail or circulars from the employee unions or from postal uniform vendors) and are intended for individual employees, must be delivered without being opened.

b. In the case of an apparent emergency, the Postal Service must accept delivery of personal mail addressed to an employee, and the head of the facility must attempt to deliver the mail to the employee.

The Postal Service wishes to emphasize that the proposed rule would not apply to mail directed to postal employees who receive mail through post office boxes.

Accordingly, although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendment of title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

PART 232—CONDUCT ON POSTAL PROPERTY

In § 232.1(h), the unnumbered first paragraph is designated as paragraph (h)(1) and present paragraphs (1), (2), and (3) are redesignated as (i), (ii), and (iii). In addition, paragraph (h)(2) is added making the section read as follows:

§ 232.1 Conduct on Postal Property.

(h) * * *
(1) * * *

(2) Solicitations and other actions which are prohibited by paragraph (h)(1) of this section when conducted on Postal Service property should not be directed by mail or telephone to postal employees on Postal Service property. The Postal Service will not accept or distribute mail or accept telephone calls directed to its employees which are believed to be contrary to paragraph (h)(1) of this section.

(39 U.S.C. 401)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 82-12897 Filed 5-11-82; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[A-4-FRL-2099-7]

Approval and Promulgation of Implementation Plans; Florida; Variance for FP&L

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On February 29, 1980 (45 FR 13455), EPA approved a Florida implementation plan revision which gave certain units of Florida Power and Light Company (FP&L) a two-year variance from the plan's limitations on particulate, sulfur dioxide, visible, and excess emissions. EPA disapproved the revision for the Turkey Point and Port Everglades plants, however. On October 15, 1980 (45 FR 68405), EPA proposed to disapprove a request by Florida that the two-year term of the variance be extended indefinitely. The U.S. Court of Appeals for the Fifth Circuit later ruled that EPA's partial disapproval of the original variance was made on an improper basis and that the two-year limitation was void. Accordingly, the Agency today proposes action on the revision for these two plants that

accords with the court's decision. EPA proposes again, but on the basis ordered by the court, to disapprove the variance for the Turkey Point and Port Everglades plants. EPA also proposes to remove the two-year limitation on the variance for the other plants. The public is invited to submit written comments on the proposed actions.

DATE: EPA will consider written comments received on or before June 11, 1982.

ADDRESSES: Send written comments to Archie Lee of the EPA Region IV Air Programs Branch at the Atlanta address below. Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Environmental Protection Agency, 401
M St SW., Washington, D.C. 20460
Air Programs Branch, EPA Region IV,
345 Courtland Street, NE., Atlanta,
Georgia 30365

Bureau of Air Quality Management,
Florida Department of Environmental
Regulation, Twin Towers Office
Building, 2600 Blair Stone Road,
Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT:

Archie Lee, Air Programs Branch, EPA Region IV, at the above Atlanta address, telephone 404/811-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION:

On August 28, 1979, the Florida Department of Environmental Regulation (DER) issued an order granting FP&L a variance from certain limitations of the State implementation plan on particulate, sulfur dioxide, visible, and excess emissions from seventeen of the company's units. These units are at the company's Cape Canaveral, Fort Myers, Manatee, Riviera, Sanford, Turkey Point, and Port Everglades plants. A Final Supplemental Order issued by DER on October 18, 1979, limited the variance to a period of two years. On February 29, 1980 (45 FR 13455), EPA approved the FP&L variance for all the units except those of the Turkey Point and Port Everglades plants, for which it disapproved the variance. This partial disapproval was based on EPA's finding that the relaxation of emission limits for these two plants would cause violation of the Class I sulfur dioxide increments of 40 CFR 52.21, Prevention of significant deterioration (PSD), in the Everglades National Park. This determination was made using the PSD baseline date (August 7, 1977) specified in the PSD regulations then in effect.

On June 23, 1980, DER requested that EPA withdraw the two-year time limit on the variance. EPA proposed on

October 15, 1980 (45 FR 68405), to disapprove the State's request.

Following suit brought by the company against EPA, the United States Court of Appeals for the Fifth Circuit ruled on June 29, 1981, in *Florida Power & Light Co. v. Costle* (No. 80-5314), that EPA had erred in using the August 7, 1977, baseline date to calculate consumption of the Class I PSD increment for sulfur dioxide in Everglades National Park. On this basis, the court set aside EPA's disapproval of the variance for the Turkey Point and Port Everglades plants. The court ruled that EPA's present definition of "baseline date" should be used to determine PSD increment consumption—that is, the baseline should be reckoned as the air quality on the date of the first application (after August 7, 1977) for a PSD permit in the area. EPA has recalculated the increment consumption in accordance with the court's directive. Using the current baseline definition, the Agency still finds that the relaxed limits for Turkey Point and Port Everglades will cause violation of the Class I sulfur dioxide increments in the Everglades National Park. Accordingly, EPA proposes again to disapprove the variance for these two plants.

The court also voided the two-year limit on the variance. Accordingly, EPA proposes to withdraw this feature of the revision in keeping with the State's request. This means that the relaxed emission limits will be in effect until revised by the State.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified this proposed rule will not, if promulgated, have a significant impact on a substantial number of small entities. The indefinite extension of the variance will have no adverse economic effect on the units concerned. In any case, the proposed disapproval action only applies to two large plants.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see address above).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110 and 163 of the Clean Air Act (42 U.S.C. 7410 and 7473))

Dated: March 31, 1982.
 Charles R. Jeter,
 Regional Administrator.
 [FR Doc. 82-12898 Filed 5-11-82; 8:45 am]
 BILLING CODE 6560-50-M

40 CFR Part 180

[PP 00000/P230; PH FRL 2122-6]

F. D. & C. Blue No. 1; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to establish an exemption from the requirement of a tolerance for F. D. & C. Blue No. 1 when used as an aquatic plant control agent. This proposed regulation to eliminate the need to establish permissible level for residues of the chemical was requested by Aquashade Inc.

DATE: Written comments must be received on or before June 11, 1982.

ADDRESS: Written comments to: Peter Gray, Registration Division (TS-767C), Process Coordination Branch, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Peter Gray, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Aquashade, Inc., PO Box 198, Eldred, NY 12732, the Administrator proposes to amend 40 CFR Part 180, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, by establishing an exemption from the requirement of a tolerance for residues of F. D. & C. Blue No. 1 when used as an aquatic plant control agent.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of active ingredient	Name and address of requestor	Basis for approval
F. D. & C. Blue No. 1	Aquashade, Inc., P.O. Box 198, Eldred, NY 12732.	21 CFR 74.101 permits use of F. D. & C. Blue No. 1 for coloring foods. 21 CFR 74.1101 permits use of F. D. & C. Blue No. 1 for coloring ingested drugs.

Based on the above information, and a review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to the environment. It is concluded therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains this inert ingredient may request, on or before June 11, 1982, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear notation indicating both the subject and the petition/document control number "[OPP-300056]". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Process Coordination Branch (TS-767C),

Rm. 716D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this regulation from the requirements of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514, 21 U.S.C. 346(e))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 4, 1982.

Douglas C. Camp,
 Director, Registration Division, Office of Pesticide Programs.

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Therefore, it is proposed that 40 CFR Part 180 be amended by establishing a new § 180.1074 to read as follows:

§ 180.1074 F. D. & C. Blue No. 1; exemption from the requirement of a tolerance.

F. D. & C. Blue No. 1 is exempted from the requirement of a tolerance when used as an aquatic plant control agent.

[FR Doc. 82-12893 Filed 5-11-82; 8:45 am]
 BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Semi-Annual Agenda of Significant Proceedings

AGENCY: Federal Communications Commission.

ACTION: Publication of Semi-Annual Agenda.

SUMMARY: The Commission publishes a Semi-Annual Agenda to provide the public with adequate notice of significant proceedings under development or review, as prescribed in Executive Order 12291 (17 February 1981). This edition of the agenda, in compliance with the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) includes notations on the applicability of the Regulatory Flexibility Act to each item. This fulfills the requirement that all agencies publish Regulatory Flexibility Agenda in April and October of each year.

EFFECTIVE DATE: April 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Claudette Pride, Office of the Managing Director, (202) 632-7513.

SUPPLEMENTARY INFORMATION:

Semi-Annual Agenda of Significant Proceedings

The Commission wants to encourage greater public participation in the FCC rule making process. To help keep the public informed of significant rule making proceedings, the Commission has prepared an agenda of important proceedings now in progress. The

Commission expects to publish an agenda of significant proceedings in the **Federal Register** every six months.

The following terms may be helpful in understanding the status of the proceedings included in this report:

A Docket Number is assigned to a proceeding if the Commission has issued either a Notice of Proposed Rule Making or a Notice of Inquiry in regard to the matter under consideration. Since January 1, 1978, the Commission has used docket numbers which consist of the last two digits of the calendar year in which the docket was established plus a sequential number which begins at 1 with the first docket initiated during a calendar year (e.g. Docket 78-1 or Docket 79-1). The abbreviation for the

responsible Bureau usually precedes the docket number, as in "BC Docket 79-164." When a docket number consists of only five digits (e.g. Docket 29622), this indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI)—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rule Making (NPRM)—issued by the Commission when it is proposing a specific change to the FCC Rules and Regulations. Before any changes are actually made, interested parties may submit written comments on the proposals.

Memorandum Opinion and Order (MO&O)—issued by the Commission to deny a petition for rule making, conclude an inquiry, modify a decision, or deny a petition for reconsideration of a decision.

Report and Order (R&O)—issued by the Commission to state a new or amended rule or state that the FCC Rules will not be changed.

Rule making (RM) Number—assigned to a proceeding after the appropriate Bureau/Office has reviewed a petition for rule making, but before the Commission has taken action on the petition.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
Broadcast					
20418	New VHF Channel Assignments; Roger Holberg, 632-7792.	Yes No X	Study of possibility of assigning new VHF channels in the Top-100 markets, specifically at this time in Charleston, West Virginia, Johnstown or Altoona, Pennsylvania, Knoxville, Tennessee, and Salt Lake City, Utah.	(1) R&O on Petitions for reconsideration being drafted; (2) R&O on Rule Making being drafted. (See also entry for BC 80-719, below).	(1) 3rd quarter; (2) 4th quarter, fiscal year 1982.
21049	Commercial Television Network Practices; Israel Teitelbaum, 632-7792.	Yes X No	Inquiry into practices and policies of the three major television networks regarding the acquisition and distribution of television programming.	Network inquiry special staff has made final report to Commission. Broadcast Bureau is preparing staff summary and recommended actions concerning special staff report.	3rd quarter, fiscal year 1982.
21310	FM Quadrasonic Broadcasting; Greg DePriest, 632-9660.	Yes No X	Inquiry into whether Commission should authorize a quadrasonic FM broadcasting system.	Notice of Proposed Rule Making (NPRM) adopted July 17, 1980. Reply comments closed on February 1981. R&O being drafted.	3rd quarter, fiscal year 1982.
21313	AM Stereo; Gregory DePriest, 632-9660.	Yes No X	The Commission must decide what, if any, standards should be established for the transmission of stereophonic program material by AM broadcast stations.	R&O adopted Mar. 4, 1982.	
21474	Equal Employment Opportunity in the Broadcast Industry; Steve Booksheshter, 632-7792.	Yes No X	Revision of FCC Form 395, the annual employment form filed by broadcasters, to make it more useful in monitoring the broadcasters' commitment to equal employment opportunity.	Additional NPRM to explore modifications of EEO rules being drafted.	
21502	Subscription (Pay) TV Operations; Freda Thyden, 632-7792.	Yes X No	Inquiry to determine whether current rules governing pay TV operation are necessary or desirable.	A further NPRM proposing further deregulation of STV service adopted Sept. 30, 1981. Report and Order to be drafted.	3rd quarter, fiscal year 1982.
BC 78-239	Voting Trusts; Steve Booksheshter, 632-7792.	Yes No X	Inquiry to determine what types of ownership interests are cognizable for purposes of the FCC's ownership rules.	NOI/NPRM adopted July 1978; comment period closed December 1978.	3rd quarter, fiscal year 1982.
BC 78-253	Inquiry Into the Proper Role of Television Translators and Low-Power TV Broadcasting; Molly Pauker, 632-7792.	Yes X No	Inquiry into uses of television translators, especially in rural areas, to determine if rules concerning translators should be changed to permit program origination and/or subscription service.	Report and order adopted Mar. 4, 1982.	
BC 79-164	Reduction of AM Bandwidth to 9 kHz; Larry Olson, 254-3394.	Yes No X	Inquiry into reduction of spacing between AM channels from 10 kHz to 9 kHz.	Final resolution is awaiting results of Region 2 conference on AM broadcasting, to be held in November 1981.	2nd session of Reg. 2 Conf. did not adopt 9 kHz spacing.
BC 79-269	New Jersey UHF-TV Assignments; Gordon Godfrey, 632-9660.	Yes No X	Study to assign 6 UHF-TV frequencies to various New Jersey communities.	NPRM adopted Oct. 18, 1979. Record closed August 1980. R&O being developed.	4th quarter, fiscal year 1982.
BC 79-270	New Jersey UHF-TV Financial Viability; Martin Blumenthal, 632-7792.	Yes No X	Study of means by which the New Jersey UHF-TV stations created in BC Docket 79-269 (above) might best become financially viable.	NPRM adopted Oct. 18, 1979 in conjunction with BC Docket 79-269; record closed August 1980.	Final action projected for same time as BC Docket 79-269, above.
BC 80-90	Use of FM Frequencies; Kathryn Hoshford, 632-9660.	Yes No X	Study of means for increasing the use of FM frequencies.	NPRM issued on Feb. 28, 1980; reply comments closed on Mar. 2, 1981. R&O being drafted.	3rd quarter.
BC 80-130	Processing of FM Rule Making Petitions; Mark Lipp, 632-7792.	Yes No X	Study of possible modifications to the procedures for processing FM petitions.	R&O being drafted in conjunction w/BC 80-90 (see above).	3rd quarter.
BC 80-190	Reduction of Financial Reporting Requirements; Brian Fortes, 632-7792.	Yes X No	Proposal to eliminate or substantially reduce amount of financial data to be reported to the Commission.	R&O adopted Mar. 11, 1982.	
BC 80-719	Reassignment of VHF-TV Frequency to New Jersey; Mark Lipp, 632-7792.	Yes No X	Study of possibility of reassigning the Channel 9 VHF-TV frequency from New York City to a New Jersey community.	NPRM adopted Nov. 6, 1980. Matter being held in abeyance pending resolution of RKO appeal by Federal court. Oral argument held October 1981.	4th quarter, fiscal year 1982.
81-741	Teletext Authorization; Alan Stillwell, 632-6302.	Yes X No	Proposal to set non-interference, non-degradation of main signal quality parameters for teletext transmission by broadcasters.	NPRM adopted Oct. 22, 1981. Comments and reply comments due 90 days after issuance.	
81-496	Elimination of Some Requirements for Public Broadcasters; John Kamp, 632-6302.	Yes X No	Proposal to eliminate or modify rules pertaining to programming, ascertainment and program logs for public broadcasters.	NPRM adopted July 30, 1981. Comments and reply comments due by Dec. 16, 1981.	4th quarter, fiscal year 1982.
Office of Plans and Policy					
80-603	Direct Broadcast Satellites; Florence Setzer, 653-5940.	Yes X No	Proposed policies for regulation of direct broadcast satellites (DBS).	NOI issued in October, 1980. NPRM issued in June 1981. 14 applications received; 9 accepted for filing. Petitions for reconsideration of applications denied.	Report and Order, second quarter 1982.
Office of Science and Technology					
RM-3524	Air to Ground Telephone Service at 900 MHz; Mel Murray, 653-8168.	Yes No X	This proposed system is designed to serve passengers on commercially scheduled airlines in the contiguous United States. Airfone, the petitioner, plans to use single sideband modulation, proposes the use of a total of 4 MHz of spectrum to provide 310 two-way voice channels which will be interconnected to the public telephone network.	The feasibility of the technical approach proposed by Airfone is presently being evaluated by Commission staff. Airfone is conducting hardware and operational testing under a Part 5 developmental license. Upon completion of testing and evaluation, a decision will be made as to whether or not to proceed with rulemaking.	

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
RM-3747	Utilities Telecommunications Council Power Line Carrier Petition; Sam Tropea, 653-8164.	Yes No X	The Petitioner seeks improved regulatory recognition and protection for electric utility powerline carrier systems in the 10-490 kHz band.	NPRM adopted Jan. 13, 1982.	
Gen. Docket 81-413	Spectrum Communications Technology; Michael Kennedy, 632-7073.	Yes No X	Inquiry into possible civil applications of spread spectrum communications technology and possible rule marking needed to permit its use (it is implicitly forbidden under present rules).	Comments have been received and are under review. Deadline for reply comments is June 30, 1982.	
Gen. Docket 80-398	Broadcasting-Satellite Planning Conference; Edward Jacobs, 653-8102.	Yes No X	Preparations of U.S. proposals to a 1983 ITU Region 2 Conference to plan the use of 12 GHz broadcasting-satellites in the Western Hemisphere.	Second NOI was adopted March 25, 1982.	The Report and order is scheduled for the third quarter fiscal year 1982.
Gen. Docket 80-184	Mobile Services Conference; Lawrence Palmer, 653-8102.	Yes No X	Preparations of U.S. proposals to a 1982 ITU World Conference on the Mobile Radio Services.	Fourth NOI has been adopted.	
Gen. Docket 80-739	WARC-79 Implementation; Fred Thomas, 653-8171.	Yes No X	The requirements of the Final Acts of WARC-79 necessitate an overhaul of Section 2.106—Table of Frequency Allocations. The changes proposed make use of a draft table developed within IRAC Ad Hoc 172.	The Fifth NOI is expected to appear on the Commission Agenda in June 1982.	
Gen. Docket 80-741	Space Services Planning Conference (Space WARC); Thomas S. Tyce, 653-8102.	Yes No X	Preparations of U.S. proposals to a 1984/1985 (2nd session) ITU WARC on Use of the Geostationary-Satellite Orbit and the Planning of the Space Stations Utilizing It.	The second NOI is expected to be on the Commission agenda in the third quarter, fiscal year 1982.	
Gen. Docket 78-369	Radio Frequency Interference to Electronic Equipment; Mike Kennedy, 632-7073.	Yes No X	Inquiry to determine extent of radio frequency interference to electronic equipment and need for government regulation to lessen such interference.	Comments have been received and are being reviewed. Options are actively being considered by the staff.	3rd quarter, fiscal year 1982.
21371	Description of Test Measurement Facilities; Syd Bradford, 653-8247.	Yes X No	Amendment of Part 2 of the Rules establishing criterion to determine the suitability of a test site for making measurements to determine compliance of equipment subject to the Commission's authorization program.	An Order terminating the proceeding is expected to be completed in the third quarter, fiscal year 1982.	
20990	Remote Control and Security Devices; George Harenberg, 653-6288.	Yes X No	Amendment of Part 15 of the Rules to provide for the operation of low power communications devices used in remote control and security applications.	A Report and Order was adopted and released. A petition for reconsideration has been received. A Memorandum Opinion and Order dealing with this petition is being prepared.	3rd quarter, fiscal year 1982.
Not assigned	NTIA 900 MHz Request	Yes No X	NTIA has requested that the Commission make provisions for the U.S. Government to access approximately 6 MHz of spectrum in the 800-900 MHz area. This spectrum is to be in two 3 MHz bands separated by 4 to 5 MHz for low-capacity 6-12 channel fixed systems. Establishment of a Spectrum Utilization Policy for the Fixed and Land Mobile Services use of spectrum between 17.7 and 40.0 GHz.	An NPRM has been drafted and is being internally coordinated.	
Not assigned	Spectrum Utilization Policy for use of Spectrum between 17.7 and 40.9 GHz.	Yes No X	Preparation of U.S. proposals for an ITU World Administrative Radio Conference for the High-Frequency Broadcasting Services.	Final draft of the NOI is near completion.	
Gen. Docket 82-165	HF Broadcasting Conference	Yes No X	Notification procedures to replace certain type acceptance type approval, or certification requirements. This would require manufacturers to submit a statement stating that the equipment complies with FCC Regulations.	First NOI was adopted on March 25, 1982.	
Not assigned	Notification Procedures	Yes X No		NPRM is being drafted and is expected to be completed by July 1982.	
Private Radio Bureau					
79-191	Release, Allocation and Criteria for Use of the 250 Remaining Channels in the 800 MHz Bands; Eugene Bowler, 634-2443.	Yes X No	Proceeding to develop rules to make the 250 reserve channels that remain in the 806-821/851-866 MHz bands available for use by private land mobile radio users.	A Report and Order is being prepared by the staff.	July 1982
GEN 80-183	Allocation of Spectrum for One-way Paging Stations in the 900 MHz Band; Charles Turner, 632-6497.	Yes X No	Allocation of spectrum and establishment of policies, rules and procedures for one-way paging stations in the Private Land Mobile Radio Service.	Further NPRM adopted Mar. 18, 1982. Comments due May 7, 1982; reply comments due May 24, 1982.	R&O September 1982.
82-121	Allocation of Frequencies in the 72-76 MHz Band for Use by Operational-Fixed Stations in the Automobile Emergency, Manufacturers, Telephone Maintenance and Taxicab Radio Services; Eugene Thompson, 632-6497.	Yes X No	Proposal to allow the use of operational-fixed radio links in the 72-76 MHz band to control multiple base stations.	NPRM adopted Feb. 25, 1982. Comments due Apr. 19, 1982; reply comments due May 4, 1982.	R&O December 1982.
82-183	Amendment of Part 90 To Eliminate the Need for a Separate Authorization To Operate Speed Detection Devices in the Police and Local Government Radio Services; Charles Turner, 632-6497.	Yes X No	Proposal to authorize Police and Local Government police licensees of stations, as part of their authorization, to operate any number of radar units without prior specific Commission approval.	NPRM adopted Apr. 1, 1982. Comments due May 10, 1982; reply comments due May 25, 1982.	R&O December 1982.

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
RM-4039	Temporary Licensing of Add-On Users of Community Repeaters in the Special Industrial Radio Service; John Borkowski/Stephanie Sperrnak, 632-6497.	Yes X No	Request amendment of Parts 1, 2, and 90 to implement a system of temporary licensing for Add-On Users of multiple-licensed mobile relay systems operating in the Special Industrial Radio Service.	Petition filed Jan. 7, 1982. Staff will be drafting NPRM for this proceeding.	October 1982.
Cable TV					
18891 and 20423	Cable TV Systems: Multiple Ownership and Cross-Ownership; Robert Ratcliffe, 632-6468.	Yes No X	Inquiry to determine if FCC should limit size of cable systems, multiple ownership and cross-ownership.	Additional R&Os are forthcoming in these dockets. Office of Plans and Policy has completed a study of these issues. Study includes telephone cross-ownership issues also.	May 1982.
21002	Cable TV Local Franchise Fees; Judith Friedman, 632-6468.	Yes No X	Proposal to eliminate rule (§76.31) that limits the ability of local authorities to collect franchise fees in excess of 3% of a cable system's gross revenues.	Draft of final R&O is in progress. Additional analysis of economic study (NEHA study) submitted in comments may be required.	Third quarter, 1982.
Common Carrier					
CC 78-196	Uniform System of Accounts for Telephone Companies; Steve Duffy, 634-1861.	Yes No X	Rulemaking to develop a system of accounts which can readily provide cost information by both jurisdiction and individual service categories.	Two assembly and three Steering Committee meetings held. MO&O released Mar. 24, 1982 on delegated authority to appoint alternatives/replacements.	June/July 1982.
CC 79-35	INMARSAT Interconnection—Implementation of Sec. 503(g) of INMARSAT Act; Glen deChabert, 632-4047.	Yes No X	Rulemaking regarding operational arrangements for maritime satellite service, interconnection with earth stations, and regulating safeguards against cross-subsidization of costs.	Staff working on two major issues—earth station ownership and COMSAT/INMARSAT losses.	June/July 1982.
CC 79-105	Deregulation of Inside Wiring; Alan Warshaw, 634-1861.	Yes X No	Inquiry into the complete deregulation of the business of furnishing inside telephone wiring.	Notice of Proposed rulemaking.	July/August 1982.
CC 79-187	AT&T Earnings on Interstate and Foreign Services in 1978; Claudia Pabo, 632-9342.	Yes No X	Inquiry to determine if AT&T's rate of return during 1978 exceeded the limits specified by the Commission in Docket 20376.	Draft Order under revision.	June 1982.
CC 78-72	MTS—WATS Market Structure Inquiry; Carl Lawson, 632-9342.	Yes No X	Inquiry to determine whether public interest requires Interstate Message Telecommunications Service and/or WATS or their functional equivalents, to be provided on a sole source basis.	Report and 3rd Suppl. notice issued Aug. 19, 1980. Staff preparing further orders on Alaska entry policy and access policy.	April 1982.
CC 80-634	Communications Satellite Corporation Structure; Jim Bell, 632-7265.	Yes X No	An inquiry into changes in the corporate structure and operations of Communications Satellite Corporation.	Recommended decision prepared, undergoing minor changes.	3rd quarter fiscal year 1982.
CC 81-412	AT&T 1981 General Rate Increase; Kent Nakamura, 623-6917.	Yes No X	AT&T tariff filing (TR, No. 13703-13708) for a general rate increase.	Tariffs suspended and set for investigation. Staff is now reviewing support data.	September 1982.
CC 80-286	Jurisdictional separation: Federal/State Joint Board to Amend Part 67/FCC Rules; J. McConaughy, 632-9342.	Yes No X	Joint Board established to recommend changes, where appropriate, to Separations Manual regarding exchange plant allocations, access and deregulation of customer premises equipment.	Joint Board Orders on CPE deregulation and subscriber plant factor (SPF) "freeze" adopted by Commission on Feb. 24, 1982. J.B. Order on early sale of CPE adopted by Commission on Mar. 25, 1982 as Second Notice of Proposed Rulemaking. Eleven regional hearings set for April/May 1982.	March 1983.
CC 80-57	Revision of Rules Part 22; M. Menius, 632-6450.	Yes X No	Comprehensive rewrite of Part 22 which governs licensing of common carrier mobile services.	Notice of Inquiry released Feb. 20, 1980. Staff preparing draft Notice of Proposed Rulemaking.	June 1982.
CC 80-584	Alaska Bush Satellite Service; Robert Mazer, 632-5930.	Yes X No	Inquiry into ownership questions related to Alaska Bush Earth Stations.	Comments have been received and are being reviewed.	December 1982.
CC 81-704	Licensing of Space Stations in Domestic Fixed Satellite Service; Ron Lepkowski, 632-5930.	Yes X No	Inquiry into adopting a revised orbital deployment plan employing reduced spacing.	Comments have been received and reply comments are due Apr. 26, 1982.	December 1982.
CC 82-45	Domestic Fixed-Satellite Transponder Sales; Bob Mazer, 632-5930.	Yes X No	Inquiry into whether domestic satellite licensees may engage in the sale of transponders.	Initial comments have been received and are being reviewed.	July 1982.
RM 3926	Amendment of Annual Report Forms "O" and "R"; Gary Oddi, 634-1861.	Yes No X	This proposed Petition for Rulemaking proposes to revise certain schedules and delete others on Forms "O" and "R."	Notice of Proposed Rulemaking completed. Recalled by Bureau on Apr. 15, 1982.	July 1982.
CC 82-185	Amendment of the USOA to Revise Sections 31.2-21(e) and 31.100-4(c)(3); Tom Petras, 634-1861.	Yes No X	This NPRM proposes to raise dollar criteria from \$100,000 and \$10,000 to \$1,000,000 and \$100,000 for journal entries on acquisition of telephone plant.	Commission approved the Notice of Proposed Rulemaking on Apr. 1, 1982.	September 1982.
RM 4084	Proposed Amendments to USOA, Part 31, for Telephone Carriers; Gary Oddi, 634-1861.	Yes No X	Proposed Amendment of the USOA, Part 31, to provide for changing the accounting treatment for certain telephone plant.	Public Notice issued Apr. 5, 1982. Interested persons may file statements within 30 days.	September 1982.
CC 79-246	AT&T Rate Structure Rulemaking; Leonard Kennedy, 632-6917.	Yes No X	Inquiry into AT&T private line tariff and rate structures and volume discount policies.	Staff preparing a First Report and Order and Further NPRM.	July 1982.
CC 79-318	Cellular Mobile Communications; Thomas Gutierrez, 632-6450.	Yes No X	Inquiry into implementation of cellular mobile communications systems.	Order on reconsideration released Mar. 3, 1982.	July 1982.
CC 80-172	Authorized User; Jim Ball, 632-7265; John Copes, 632-4047; Ken Stanley, 632-7413.	Yes No X	NPRM on whether to authorize non-carrier entities to obtain service entities to obtain service directly from Comsat for provision of international communications.	Report and Order in preparation.	End fiscal year 1982.

Rulemaking or docket No.	Title of proceeding, contact person	RFA	Description	Stage of development	Projected Commission action
CC 80-632	Overseas Communication Service; Stuart Chiron, 632-7265.	Yes No X	The Commission has tentatively concluded that voice/record dichotomy in international services no longer serves the public interest. This NPRM proposes to permit the IRTs to provide international voice services and AT&T to provide international record services. An inquiry into procedures for implementation of detariffing of embedded CPE and enhanced services.	Notice of Proposed Rulemaking adopted Oct. 9, 1980. All pleadings have been filed.	End fiscal year 1982.
CC 81-893	Procedures for Implementing the Detariffing of CPE and Enhanced Services; William Reece, 632-4715.	Yes No X		Notice of Inquiry adopted Dec. 17, 1981; release Apr. 13, 1982.	1st quarter, 1983.
Office of General Counsel					
78-167	Ex Parte Communications During Informal Rulemaking Proceedings; Susan Steiman, 632-6990.	Yes No X	Petitions for reconsideration of Report and Order regarding <i>ex parte</i> rules applicable to informal rulemaking proceedings.	Draft memorandum opinion and order being reviewed	End fiscal year 1982.
Gen. 79-163	Comparative Renewal Policy Statement; David Silberman, 632-7112.	Yes No X	Inquiry to determine whether FCC can define "meritorious service" and legitimate renewal expectancy for purpose of comparing incumbent broadcast licensee with competing applicant for the frequency.	Comments filed Jan. 15, 1982; reply comments filed Feb. 12, 1982. Draft report being prepared.	1st quarter, fiscal year 1983.
Gen. 81-500	Policy regarding character qualifications in broadcast licensing; David Senzel, 632-8054.	Yes No X	Inquiry into appropriate policy regarding the character qualifications of broadcast licensees.	Draft Report and Order being reviewed	End fiscal year 1982.
Gen. 81-768	Use of random selection rather than comparative hearings to select among mutually exclusive applicants; Randy W. Thomas, 632-6990.	Yes X No	Petitions for reconsideration of FCC decision refusing to adopt random selection system.	Draft memorandum opinion and order being prepared	End fiscal year 1982.

[FR Doc. 82-1275 Filed 5-1-82; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 47, No. 92

Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting To Consider Proposed Enlargement of the McKinley Mine in New Mexico

Notice is hereby given in accordance with § 800.6(d)(3) of the regulations of the Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Council will meet in special session on the afternoon of May 25, 1982, to consider the proposed enlargement of the McKinley Mine, a surface coal mine on Navajo Indian lands in New Mexico. It has been determined that this undertaking, regulated by the Office of Surface Mining, Department of the Interior, will adversely affect properties eligible for the National Register of Historic Places.

Pursuant to § 800.6(d)(2) of the Council's regulations, the Chairman of the Council decided on May 6, 1982, that the Council should consider this project in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470(f)).

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listing in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretary of the Interior, the Architect of the Capitol, the Secretary of Agriculture, and the heads of four Federal agencies appointed by the President, one Governor and one Mayor appointed by the President, the President of the National Conference of State Historic Preservation Officers, the Chairman of the National Trust for Historic Preservation, and seven private citizens appointed by the President. The

Council is chaired by Mr. Alexander Aldrich of Saratoga Springs, New York. The Council will meet in Room EF-100, United States Capitol, Washington, D.C.

The Council will consider written and oral statements from concerned parties. Written statements should be submitted to the Executive Director of the Council by May 19, 1982. Persons wishing to make oral statements should notify the Executive Director by May 21, 1982. Additional information concerning the meeting or the submission of statements is available from the Executive Director, Advisory Council on Historic Preservation, Attention: Dr. Thomas F. King, 1522 K Street NW., Washington, D.C. 20005 (202-254-3974).

Dated: May 7, 1982.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 82-12927 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 7, 1982.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Comments and questions about the items in the listing should be directed to the agency person named at the end of each entry. If you anticipate commenting on a form but find that preparation time will prevent you from submitting comments promptly, you should advise

the agency person of your intent as early as possible.

Copies of the proposed forms and supporting documents may be obtained from: Richard J. Schrimper, Statistical Clearance Officer, (202) 447-6201.

New

• Forest Service
Supplemental Qualifications Statement,
Forestry Aid/Technician Positions,
GS-2/7

On occasion

Individuals or households: 9,000
responses; 9,000 hours; not applicable
under 3504(h)

Barbara Carter (703) 235-2044

• Agricultural Stabilization and
Conservation Service

Application for Handler to Handler
Transfer of Contract Additional
Peanuts

CCC-1006

With each change of ownership

Farms, businesses or other institutions:
90,000 responses; 9,000 hours; not
applicable under 3504(h)

Bob Ray (202) 382-9106

• Human Nutrition Information Service

Pilot Study of Measures of Individual
Food Intakes of the Low-Income
Population

(RFP)

Quarterly

Individuals or households: 15,760
responses; 15,760 hours; not
applicable under 3504(h)

Robert B. Reese (301) 436-8484

• Food and Nutrition Service
Claim for Reimbursement

FNS-806

Monthly

Businesses or other institutions: 15,000
responses; 21,900 hours; not
applicable under 3504(h)

Rose T. Buskey (703) 756-3864

• Agricultural Stabilization and
Conservation Service Report on
Performance in Labor Surplus Areas

CCC-263

On occasion

Businesses or other institutions: 200
responses; 50 hours; not applicable
under 3504(h)

Carl Graham (202) 447-4253

Revised

• Foreign Agricultural Service
Application for Clearance of Labels to
Export Food Products

FAS-633

On occasion

Businesses or other institutions: 400 responses; 66 hours; not applicable under 3504(h)

William L. Scholz (202) 447-6343
• Agricultural Cooperative Service
Phase IV Growth of Cooperatives and Proprietary Firms

Nonrecurring

Businesses or other institutions: 170 responses; 42 hours; not applicable under 3504(h)

Charles A. Kraenzle (202) 447-8411

Extension

• Extension Service

Evaluation of Expanded Food and Nutrition Education Program

Family Record A and B

Semiannually

Individuals or households: 213,050 responses, 35,507 hours; not applicable under 3504(h)

Nancy B. Leidenfrost (202) 426-6230

Reinstatement

• Agricultural Stabilization and Conservation Service

Supplier's Agreements

CCC-308

On occasion

Businesses or other institutions: 1,000 responses; 166 hours; not applicable under 3504(h)

Beverly Pritts (202) 447-8374

Richard J. Schrimper,

Statistical Clearance Officer.

[FR Doc. 82-12868 Filed 5-11-82; 8:45 am]

BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

[Order 82-5-28; Docket No. 40603]

Application of Air Niagara, Inc. for a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting a Fitness Determination of Air Niagara, Inc., 82-5-28, Docket 40603.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Air Niagara, Inc.

DATES: Persons wishing to file petitions to intervene in the Air Niagara Fitness Investigation shall file their petitions in Docket 40603 by May 21, 1982, and serve such filings on all persons listed below.

ADDRESSES: Petitions to intervene should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 40603. Application of Air Niagara, Inc. for a certificate of public convenience and necessity. In addition, copies of such filings should be served on: Air Niagara, Inc.; the Mayors

of Niagara, NY, Buffalo, NY, New York, NY, and Newark, NJ; the managers of these cities' airports; the State Departments of Transportation or Aeronautics Commissions of New York and New Jersey; and the Federal Aviation Administration.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT:

Joseph W. Bolognesi, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428; (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-5-28 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request.

By the Civil Aeronautics Board: May 7, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-12920 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40534; Order 82-4-113]

Braniff-Pan American Route Transfer Case; Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of April 1982.

Introduction

On March 17, 1982, Braniff Airways, Inc., and Pan American World Airways, Inc., applied to us for approval, pursuant to section 412 of the Federal Aviation Act, as amended, of an "Interim Operating and Joint Service Agreement" reached by them on the same day.¹ Under the terms of the agreement, Braniff is required to suspend its South American service, except for Venezuela, for a period of four years, and to lease the routes and certain of its personnel and facilities in South America to Pan American, in exchange for approximately \$30 million to be paid by Pan America. The carriers request that we grant the transactions contemplated by the agreement antitrust immunity, pursuant to section 414 of the Act, and that we grant Pan American exemption authority, pursuant to section 416 of the Act, to the extent necessary to enable it to provide substitute service for Braniff. Alternatively, the applicants ask for an

immediate grant of interim authority to permit operations on a temporary basis if we decide that an oral hearing is necessary.

Upon the signing of the agreement, Pan American paid Braniff a non-refundable payment of \$7 million. Pan American would pay Braniff another \$13 million upon approval of the agreement by us, according to a prorated schedule based on the grant of operating authority by each foreign government. In addition, Braniff would receive another \$10 million that will be paid in monthly installments beginning in February, 1983, and further payments computed from Pan Am's net profits commencing in 1984. The agreement defines the Braniff personnel and facilities that will be used by Pan American on the South American network; establishes the method of payment and conveyance of certain inventories and leaseholds from Braniff to Pan American; sets the contractual requirements for Braniff to recoup certain leaseholds and properties at the end of the operating period; and establishes the requirements for Braniff's resumption of service. The parties provide for the termination of the agreement if our approval includes conditions either party deems materially adverse to its interests. In addition, paragraph four of the agreement states that Braniff will not "directly or indirectly, assign or otherwise transfer or attempt to assign or transfer its authority in the Affected Area during the term of the Agreement."

In support of their request for approval of the agreement, the applicants state that Braniff is in a severe financial crisis which threatens the viability of its entire system, both domestic and international; that the interim operating and joint service agreement represents the only means to rescue it; that Braniff can no longer profitably operate the valuable South American network; that Pan American is the only U.S.-flag carrier that can realistically provide the substitute service required to maintain Braniff's network intact; and that approval of the agreements would aid Pan American, preserve U.S. route rights in South America, maintain the employment of Braniff's ground staff in South America, and protect the travel plans of those already holding Braniff reservations.

Comments, answers, and responses to the agreement were filed by the Departments of State and Transportation, members of the New York Congressional Delegation,² Senator

¹ Contemporaneously with the agreement, Braniff and Pan American entered into separate agreements under which Pan American paid Braniff \$3 million for the assignment of certain terminal facilities at Houston International Airport. The applicants do not seek approval of these agreements.

² Senators Alfonse M. D'Amato and Daniel Patrick Moynihan; Congressmen Samuel S. Stratton,

Howard W. Cannon, numerous labor groups,³ civic and other parties⁴ and air carriers.⁵ The applicants filed a reply.

In brief, DOT urges approval of the agreement because it believes that the agreement is the most readily available means of assuring that there will be no service disruptions to/from South America and that the existing network of U.S. carrier service throughout the region will be maintained. The Department of State takes no position on the merits of the application at this time, but it urges us to establish an expedited schedule to process the agreement, and states that it is essential the President be afforded section 801 review rights because of the important foreign relations considerations. The New York Congressional Delegation and most of the civic parties support the agreement. Senator Cannon supports interim approval. Generally speaking, those labor groups representing Pan American employees support the agreement unconditionally, while those representing Braniff employees state that if we approve the agreement we should either impose labor protective provisions or other conditions designed to allow Braniff employees to follow the transfer of Braniff's South American routes.

The air carriers are unanimous in their opposition to the agreement. They contend that the proposal is tantamount to a sale or an exchange of a significant portion of Braniff's properties, and that an oral evidentiary hearing is required under section 408, especially where, as in this case, there are material issues of fact in dispute. The carriers argue that the agreement does not meet the standards of sections 408 or 412, that it will reduce competition, and that it is inconsistent with the pro-competitive

standards of the Act and our international pro-competitive philosophy. Furthermore, they maintain that the applicants have not proved that there is an overriding transportation need that requires Pan American's immediate replacement of Braniff in South America and that there are no less anticompetitive alternatives within the meaning of the Act to the agreement. Lastly, they question whether the sale will provide public benefits to either Braniff or Pan American and especially whether the payment to Braniff will mean the difference between Braniff's survival or collapse.

Statement of Board Action

The integrated package that the applicants have asked us to approve raises many serious factual, policy and legal issues about air service competition in South America which require more information and consideration before we can reach a final decision on the agreement. The issue of the competitive impact of the Braniff-Pan Am agreement on U.S.-South America service, in particular, is complex, far-reaching and strongly contested and raises fundamental international aviation and competitive concerns. The agreement would reduce actual competition in certain South American markets and would essentially leave Pan American as the sole U.S.-flag carrier in South America, thus reversing the United States' policy for 30 years of assuring that at least two U.S. carriers maintain a substantial presence in South America. For these reasons, we also cannot now consider approving the agreement on an interim basis before completing an oral evidentiary hearing. We shall, however, grant the two airlines' alternative request for an expedited hearing. We will set the issue of the approval of the Braniff-Pan American route agreement down for an extremely expedited oral evidentiary hearing under sections 401, 408, and 412 before an administrative law judge, with direct certification of the record to the Board. This will enable us to issue a tentative decision by the end of July, 1982.

We are sensitive, however, to the need to avoid a premature breakup of the Braniff South American route network that could cause an interruption in service in the area. A break in U.S.-flag service could cause substantial passenger inconveniences, and possible problems in our international aviation relations with South American countries. We are also sensitive to Braniff's financial situation and to its claim that a route transfer is a necessary

method of obtaining immediate financial relief. We are willing, therefore, to consider alternative agreements reached by Braniff for the transfer or use of its assets, including this route authority, for money.⁶ In particular, we are prepared to consider expeditiously any other arrangements, whether interim, long-term, or both, that do not raise the broad competitive issues presented by this application and that provide for a continuation of service over Braniff's South American route system.⁷

To negotiate with other potential bidders, Braniff must be free of any contractual obligation that would bar such negotiations. Paragraph 4 of the agreement, which provides that Braniff will not "directly or indirectly, assign or otherwise transfer or attempt to assign or transfer its authority in the Affected Area during the term of the Agreement," would appear to prohibit Braniff from discussing alternative arrangements with other airlines. To remove this hindrance and to facilitate the development of other proposals, we will disapprove, as not being in the public interest, paragraph 4 of the agreement.

Statutory Framework

The applicants request us to give approval under section 412 and to grant antitrust immunity under section 414 to a four year lease of Braniff's South American route rights and certain personnel and grounds facilities. We find that section 408 of the Act is also involved. Section 408 requires Board approval of a purchase, lease or contract to operate a substantial portion of a carriers properties. The long-term transfer of all of Braniff's South American routes except Venezuela, plus ground equipment and facilities, is clearly "substantial" by the standards of section 408. Under both sections 408 and 412, we must examine a transaction to determine whether it is in the public interest. We cannot approve a transaction under either section that would substantially reduce competition unless we find that there are serious transportation needs or important public benefits that cannot be achieved through reasonably available less anticompetitive means.

⁶ Applicants seeking to provide interim service should recognize the limitations imposed on us by the decision in "Kodiak Airways, Inc. v. CAB", 447 F. 2d 341 (D.C. Cir. 1971).

⁷ We will consider interim proposals that provide service by more than one carrier. However, in order to avoid undue complications in the process of substituting a carrier for Braniff, we will limit our consideration of interim proposals to those which do not involve the provision of services by more than one operating entity at each South American point now served by Braniff.

Joseph P. Addabbo, Henry J. Nowak, Fred W. Richmond, Charles B. Rangel, Benjamin A. Gilman, Frank Horton, Geraldine A. Ferraro, William Green, Donald L. Mitchell, Stephen J. Solarz and Norman F. Lent.

³ Transport Workers Union of America, AFL-CIO; Pan American Master Executive Council; Braniff Pilots Master Executive Council; National Air Lines Flight Engineers International Association; Allied Pilots Association; Pan American Chapter, Flight Engineers International Association, AFL-CIO; Air Line Pilots Association; and the International Association of Machinists and Aerospace Workers.

⁴ The City of Houston, the City of Wichita and the Wichita Area Chamber of Commerce, the Cities and Chambers of Commerce of Dallas and Ft. Worth, the North Texas Commission, the Dallas-Ft. Worth Regional Airport, Mr. Arthur Viksne and Golden Holiday Tours, Inc.

⁵ Air Florida, American, Capitol, Eastern, Transamerica, TWA, Western and a new entrant, Earth Space Transport Systems, Corp., which wants to provide only first-class service to South America. Various carriers filed exemption applications to operate many of Braniff's South American routes. We shall handle these applications separately.

We also find that this case involves sections 401 (d) and (h) of the Act. Section 401(h) provides that no certificate may be transferred unless the transfer is approved by us as being consistent with the public interest. Although the applicants have cast their transaction in the form of a four year lease, we find that, in all material aspects, what we are being asked to approve is a transfer of Braniff's South American certificate authority along with other assets to Pan American.⁸ As we and the courts⁹ have repeatedly emphasized, section 401 remains the primary method of conferring route authority, and we have traditionally considered the transfer of route authority to require Board approval under section 401(h).¹⁰ In addition, we shall place section 401(d) of the Act in issue because we have not yet decided what type of certificate authority we would issue to Pan American if we approved the agreement. It has been our policy to issue temporary, five-year, experimental authority for service in limited entry international routes. Since most of the South American routes at issue are entry-restricted, we must consider whether temporary authority should be issued under section 401(d).

Scope of the hearing

The purpose of our decision to investigate the Braniff/Pan American route agreement is to develop an evidentiary record so that competitive and public interest findings can be made about the agreement. In particular, we request that the Judge and the parties explore the issues discussed below.

We wish to examine the impact in terms of actual or potential competition of the route transfer in any relevant geographic market. We wish to explore to what extent there is structural competition between services to different countries or between services to the east and west coasts of South

America from the U.S. In addition, we wish to examine whether international aviation policy considerations would warrant disapproval of the route transfer even if it were not found to be anticompetitive under section 408 or 412.

The Judge and the parties should also develop evidence on whether there are transportation needs and benefits that may outweigh any significant anticompetitive effects that may be shown to exist. In particular, we want to explore the argument that preservation of Braniff's network and the United States' Fifth Freedom rights outweigh any anticompetitive effects. The Judge and the parties should develop evidence on the extent to which service to Braniff's markets depends upon an integrated network and the extent to which its existing network can be divided into viable operating patterns among separate carriers. We also wish to determine whether there are international aviation policy or other public interest factors that would warrant approval, including financial assistance to Braniff.

Another important issue which requires factual development, if the agreement is shown to be substantially anticompetitive, is the reasonable availability of less anticompetitive alternatives that would achieve or preserve important transportation objectives. Assuming that the preservation of Braniff's network is desirable, we want the Judge and the parties to develop a factual record on whether a proposal by another carrier, carriers, or a combination of proposals by more than one carrier, would be a more reasonable means of achieving this goal. Because of the tight time constraints we are faced with, we will not consider competing certificate, exemption, or route transfer proposals in this proceeding.¹¹ However, we invite carriers to introduce evidence in their exhibits of other certificate, exemption or route transfer proposals to demonstrate the existence of reasonably available, less anticompetitive alternatives.

The parties also should focus on whether the imposition of labor protective provisions as a condition of

Board approval of the agreement would satisfy important public benefits such as the avoidance of labor strife. In addition, the parties should discuss whether any transfer of Braniff's certificate authority pursuant to section 401(h) should be in the form of a temporary experimental certificate rather than a permanent certificate. In this context, the proceeding should consider whether we should, as a condition of approval of the agreement, alter, amend, modify, or suspend Braniff's permanent South American authority.¹² We also want to explore whether any approval could or should be conditioned upon the disallowance of the route acquisition and related costs from the cost adjustments to the Standard Foreign Fare Level for South America.¹³

As indicated earlier, our intention is to process this investigation on an extremely expedited basis. While we would prefer to have a recommended decision by the Judge, we realize that the tight time constraints that we are under in this case require us to dispense with a recommended decision. We urge the Judge to aim for completion of the hearing and certification of the record to us by June 15, 1982. We expect the parties to cooperate fully with the Judge in the attainment of this goal, and we authorize him to eliminate customary procedural steps, such as the prehearing conference, in the interests of expedition. Briefs to the Board are due June 28, 1982. The date for oral arguments, if any, will be decided upon later. We plan to issue a tentative decision by July 30, 1982. In line with the requirements of the Act, we will transmit any decision on a transfer of certificate authority to the President for review under section 801 of the Act.

Accordingly,

1. We institute the Braniff-Pan American Route Transfer Case in Docket 40534 to consider the application of Braniff Airways, Inc. and Pan American World Airways, Inc. to lease Braniff's South American routes, except for Venezuela, and certain Braniff personnel and facilities to Pan American for four years;

2. This investigation shall consider whether the application should be approved under sections 401, 408, 412, and, if so, what conditions should be imposed, if any, and whether antitrust immunity should be granted under section 414 of the Act;

¹² To the extent that we find that such action would be in the public interest, section 401(g) is also involved in this investigation.

¹³ See section 1002(j)(9) of the Act.

⁸ Under the agreement Pan American will operate the routes for its own account for four years. In addition, Braniff will "assign away and transfer" to Pan Am all of its interests in leases in South America for real or personal property, including ground equipment (Par. 6A), and Pan Am will pay all taxes and ownership costs for its use of Braniff's owned assets during the four years. (Par. 6C). At the end of four years if Braniff does not resume service, it must "execute deeds, bills of sale, assignments and any other documents as Pan Am may reasonably request, evidencing the sale, transfer and conveyance of all assets transferred under Subsections 6A and 6C hereunder to Pan American." (Par. 15).

⁹ Northwest Airlines, Inc., et al. v. Civil Aeronautics Board, 535 F.2d 748 (D.C. Cir. 1976).

¹⁰ E.g., TWA-Southern Route Exchange, 68 CAB 662 (Order 75-9-6); Eastern-Ozark Route Transfer, 68 CAB 587 (Order 75-9-5); Zantop-Coastal Certificate Transfer, 36 CAB 139; South Pacific-Pan American Agreements, 39 CAB 840.

¹¹ The Board has traditionally considered route transfer proposals without consolidating competing route applications. See, e.g., American-Airwest Route Exchange, 68 CAB 92 (Order 78-8-43); Eastern-Ozark Route Transfer, 37 CAB 749 (Order E-19055). The courts have held that the Board has discretion to order its hearing priorities and to limit the scope of its proceedings. See, Frontier Air Lines v. CAB, 349 F.2d 587 (10th Cir. 1965); National Airlines v. CAB, 243 F.2d 807 (D.C. Cir. 1956). As indicated earlier, we will consider alternative certificate, exemption, or route transfer proposals expeditiously in separate proceedings.

3. We set the case for an oral evidentiary hearing before an administrative law judge of the Board;

4. We deny Braniff and Pan American's request for interim relief pending our decision in the case instituted in paragraph 1;

5. We direct the administrative law judge in this case to certify the record to us by June 15, 1982;

6. Briefs to the Board are due on June 28, 1982;

7. We find that paragraph 4 of the agreement between Braniff and Pan American filed in this docket is adverse to the public interest and we disapprove the agreement to the extent that it prevents Braniff from negotiating or agreeing to transfer its certificate authority in South America to another carrier or carriers;

8. We make the Bureau of International Aviation a party to this case;

9. Petitions for reconsideration of this order and intervention shall be filed on April 27, 1982, and replies shall be filed on May 4, 1982; and

10. We shall serve this order on the United States Departments of Justice, Transportation, and State, and on all parties that have filed pleadings in Docket 40534.

We shall publish this order in the **Federal Register**.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,¹⁴

Secretary.

Smith, Member, Dissenting:

Braniff, by its own admission, is not willing and able to continue to serve its South American routes. The Board, should, therefore, immediately institute a proceeding to select a carrier or carriers to replace Braniff upon its suspension of service.

Since such a proceeding would take up to a year, in order to allow for proper consideration of the issues, the route transfer from Braniff to Pan American should be allowed in the interim under exemption authority. Pan American is in the best position to provide the service under exemption authority considering its resources and willingness to take over existing stations, personnel and equipment and its presence in 4 of the 9 countries involved. Such service, under the terms of the temporary authority, should not prejudice the ultimate carrier selection in the ongoing proceeding.

In this way, Braniff would receive a measure of the financial relief it requires, U.S. flag carrier service would continue uninterrupted in South America and the Board could give proper regard to the public convenience and necessity parameters of

fares, service, and competition maintenance in a full carrier selection process.

James R. Smith.

[FR Doc. 82-12921 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

Commuter Fitness Determination; Patterson Aircraft Co. et al.

The Board is proposing to find the following carriers fit, willing and able to provide commuter air carrier service under Section 419(c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
82-4-153	Patterson Aircraft Company	May 18, 1982.
82-5-2	Burlington Aeroplane Company.	May 21, 1982.
82-5-7	Garlines, Inc.	May 21, 1982.
82-5-8	Colonial Airlines, Inc.	May 21, 1982.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data for Order 82-4-153 and 82-5-2, -7, and -8 with the Special Authorities Division, Room 915; 1825 Connecticut Avenue, NW., Washington D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT:

For Order 82-4-153: Ms. Patti Szrom, (202) 673-5088, for Orders 82-5-2 and -8: Ms. Anne Stockvis, (202) 673-5198; and for Order 82-5-7: Mr. J. Kevin Kennedy, (202) 673-5918, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428.

By the Civil Aeronautics Board, May 6, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-12919 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40627]

Houston-Acapulco Route Proceeding; Rescheduling of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on June 3, 1982 (47 FR 18159, April 28, 1982), is hereby rescheduled for June 2, 1982, at

10:00 a.m. (local time) in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., May 7, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-12922 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40379]

Northeastern International Airways, Inc., Fitness Investigation; Postponement of Prehearing Conference

On May 7, 1982, the applicant requested a postponement of the prehearing conference until June 9, 1982. The Bureau of Domestic Aviation has no objection to this request.

Accordingly, notice is hereby given that the prehearing conference in the above-entitled matter scheduled to be held on May 10, 1982 (47 FR 17603, April 23, 1982), is hereby postponed until June 9, 1982, at 10:00 a.m. (local time) in Room 1012 in the Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., May 7, 1982.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 82-12923 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

[Orders 82-5-3, 80-12-153; Docket Nos. 40516, etc.]

Order Concerning Mail Rates for Tyee Airlines, Inc. et al.

Order 82-5-36, May 7, 1982, Dockets 40516, 40517 and 40519, establishes temporary intra-Alaska service mail rates for Tyee Airlines, Inc., L.A.B. Flying Service, Inc. and Channel Flying, Inc. at the same level as authorized for Alaska Airlines, Inc. by Order 80-12-153.

Copies of the order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington Metropolitan area may send a postcard request.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-12924 Filed 5-11-82; 8:45 am]

BILLING CODE 6320-01-M

¹⁴ All Members concurred except Member Smith who dissented and filed the attached dissenting statement.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 3-82]

Foreign-Trade Zone 49; Newark/Elizabeth, N.J.; Extension of Comments Period

The period for comments on the above case involving the proposed expansion of Foreign-Trade Zone 49 to include the entire Port Newark/Elizabeth Port Authority Marine Terminal (47 FR 2898, 1-20-82 and 47 FR 9259, 3-4-82), is further extended to June 16, 1982. Submissions are limited to rebuttal comments on the record as of this date.

Submission shall include 12 copies. Material submitted for the record to-date will be available at the places where the application has been available to the public.

U.S. Department of Commerce, District Office, Capitol Plaza, 8th Floor, 240 West State Street, Trenton, New Jersey 08608;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3721, 14th and Constitution, NW., Washington, D.C. 20230.

Dated: May 7, 1982.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 82-12928 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Arizona State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulation issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81-00126. Applicant: Arizona State University, Tempe, Arizona 85281. Article: ER 200-D10/12 Electron Paramagnetic Resonance Spectrometer with Accessories. Manufacturer: Bruker-Physik, West Germany. Intended Use of Article: See Notice on page 20584 in the *Federal Register* of April 6, 1981.

Comments: Comments postmarked April 23, 1981 have been received from Varian, 611 Hansen Way, Palo Alto, California 94303. Varian states it believes that these comments clearly indicate that an electron paramagnetic resonance (EPR) spectrometer of equivalent scientific value for the purposes for which the article is intended to be used was available in the United States (at the time the foreign article was ordered). Decision:

Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (October 10, 1980). Reasons: The applicant requires the highest temperature capability available for studying the behavior of solids at elevated temperatures. The foreign article provides a high-temperature resonator made from high purity quartz that allows electron paramagnetic resonance (EPR) work up to 1300° kelvin (K) or 1030° C. The most closely comparable domestic instrument is either the model E-109 or E-112 of Varian's E-line Century series. Varian claims in its comments that either of two instruments from its E-line Century Series, the Model E-109 or the Model E-112, could meet the applicant's needs. Varian also states that the applicant "fails to identify any pertinent characteristics for the foreign article which (are) unavailable in comparable domestic instruments." But Varian did not specifically address the pertinency of the 1300° K operating capability even though the applicant clearly claimed that feature to be pertinent in response to question 8. Further, the brochure that Varian enclosed with its comments indicates that the variable temperature controller for its E-109 or E-112 is not intended for work beyond 570° K (300° C). The Department of Health and Human Services (DHHS) advises in its memorandum dated October 10, 1981 that (1) the temperature feature of the foreign article described above is pertinent to the purposes for which the foreign article is intended to be used and (2) it knows of no domestic instrument that had this capability at the time the article was ordered. We therefore find that neither the Varian E-109 nor the E-112 was of equivalent scientific value to the foreign article for such purposes as the article was intended to be used at the time the foreign article was ordered.

The Department knows of no other instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to

be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12929 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Brookhaven National Laboratory; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 82-00006. Applicant: Brookhaven National Laboratory, Upton, New York 11973. Article: Powder Diffraction Diffractometer with Accompanying Accessories. Manufacturer: Robert Huber Diffractionstechnik, West Germany. Intended Use of Article: See Notice on page 56634 in the *Federal Register* of November 18, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides vertical scattering and triple axis geometry. The National Bureau of Standards advises in its memorandum dated March 26, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12930 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR part 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 82-00076. Applicant: The University of New Mexico, Purchasing Department, 600 Buena Vista NE., Albuquerque, N.M., 8731. Article: Electron Microscope, Model H-600-2 and Accessories. Manufacturer: Hitachi, Ltd., Japan. Intended Use of Article: See Notice on page 6680 in the *Federal Register* of February 16, 1982. Article Ordered: September 15, 1981.

Docket No. 82-00078. Applicant: Washington State University, College of Veterinary Medicine, Department of Veterinary and Comparative Anatomy, Pharmacology and Physiology, Wegner Hall, Pullman, WA 99164. Article: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Ltd., Japan. Intended Use of Article: See Notice on page 6680 in the *Federal Register* of February 16, 1982. Article Ordered: March 27, 1981.

Docket No. 82-00081. Applicant: University of Kentucky Medical Center, Department of Pathology, Lexington, Kentucky 40536. Article: Electron Microscope, Model JEM 100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use of Article: See Notice on page 6680 in the *Federal Register* of February 16, 1982. Article Ordered: September 17, 1981.

Docket No. 82-00092. Applicant: McGuire VA Medical Center, Broad Rock Rd. and Belt Blvd., Richmond, VA 23249. Article: Electron Microscope, Model EM10 CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use Of Article: See

Notice on page 13394 in the *Federal Register* of March 30, 1982. Article Ordered: December 30, 1981.

Docket No. 82-00098. Applicant: Saint Margaret Hospital, Clinical Laboratory, 5454 Hohman, Hammond, IN 46320. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use of Article: See Notice on page 13394 in the *Federal Register* of March 30, 1982. Article Ordered: January 10, 1980.

Docket No. 82-00099. Applicant: Wm Beaumont Army Medical Center, P.O. Box 70003, El Paso, TX 79920. Article: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use of Article: See Notice on page 13394 in the *Federal Register* of March 30, 1982. Article Ordered: July 15, 1981.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, was being manufactured in the United States at the time the articles were ordered. Reasons: Each foreign article to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each article establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each article described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12933 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Rice University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81-00394. Applicant: Rice University, Chemistry Department, 6100 S. Main Street, P.O. Box 1892, Houston, TX 77005. Article: Excimer Laser, TE-861-T with Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended Use of Article: See Notice on page 56632 in the *Federal Register* of November 18, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides an average power of 18 watts (KrF). The National Bureau of Standards advises in its memorandum dated March 16, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use which was available at the time the foreign article was ordered (April 14, 1981).

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12931 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2097 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 81-00399. Applicant: University of Minnesota, Department of Chemical Engineering and Materials Science, 421 Washington Avenue, SE., Minneapolis, MN 55455. Article: Vibrating Flow Densimeter with Accessories. Manufacturer: Sodev, Inc., Canada. Intended Use of Article: See Notice on page 56633 in the Federal Register of November 18, 1981.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article has a sensitivity of one part per million over an extended temperature range. The National Bureau of Standards advises in its memorandum dated March 3, 1982 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 82-12932 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

New Orleans World's Fair, 1984; Availability of Final Environmental Impact Statement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of availability of final environmental impact statement.

SUMMARY: The International Trade Administration (ITA) announces the availability of the Final Environmental Impact Statement (FEIS) regarding the proposed 1984 International Exposition in New Orleans, Louisiana.

COMMENT PERIOD: The 30-day public review and comment period on this FEIS is scheduled to close on June 14, 1982. Written comments on the FEIS should be forwarded to Mr. Ed Wilczynski, U.S. Department of Commerce, Room 6710, 14th St. & Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508), the International Expositions Staff of the U.S. Department of Commerce has prepared a Final Environmental Impact Statement (FEIS) for the proposed 1984 Louisiana World Exposition to be held in New Orleans, Louisiana.

This FEIS is being transmitted for review to Federal, state and local governmental agencies having jurisdiction by law or expertise with respect to any environmental impact involved and to appropriate Federal, state or local agencies authorized to develop and enforce environmental standards, and to groups, organizations and individuals known to have an interest in the project.

The FEIS contains all comments received on the Draft Environmental Impact Statement (DEIS), which was circulated December 4, 1981, and the responses to those comments. The FEIS also addresses the comments and questions raised at the public hearing on the DEIS held January 6, 1982, in New Orleans.

FOR FURTHER INFORMATION CONTACT: Mr. Wilczynski at the above address or at (202) 377-2938.

Copies of the Final Environmental Impact Statement are available for review at the following locations:

1. City Planning Commission, Room 9W, City Hall, 1300 Perdido Street, New Orleans, LA 70130
2. New Orleans Central Library, 219 Loyola Avenue, New Orleans, LA 70112

3. Algiers Regional Library, 3014 Holiday Drive, New Orleans, LA 70114
4. East New Orleans Regional Library, 5641 Read Boulevard, New Orleans, LA 70127
5. Gentilly Branch Library, 3000 Foy Street, New Orleans, LA 70122
6. Milton Latter Branch Library, 5120 St. Charles Avenue, New Orleans, LA 70115
7. Broadmoor Branch Library, 3841 Washington Avenue, New Orleans, LA 70125
8. Nix Branch Library, 1401 So. Carrollton Avenue, New Orleans, LA 70118
9. Special Collections, Earl K. Long Library, University of New Orleans Lakefront, New Orleans, LA 70122
10. Louisiana Exposition Authority, 1575 Riverside North, Suite 230, Baton Rouge, LA 70802
11. Jefferson Parish Library, Library Headquarters, Metairie, LA 70017
12. St. Bernard Parish Library, 1125 E. St. Bernard Hwy., Chalmette, LA 70043
13. St. Tammany Parish Library, 402 S. Jefferson Avenue, Covington, LA 70433
14. U.S. Department of Commerce, International Expositions Staff—Room 2128, 14th St. & Constitution Avenue, NW., Washington, D.C. 20230

Donald V. Earnshaw,

Acting Assistant Secretary for Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 82-12839 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Financial Assistance Award; Salt Lake City, Utah

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications for a cooperative agreement under its Business Development Center (BDC) program to operate a pilot project for a twelve (12) month period.

Applicants will be required to contribute at least 10% to the total program costs through non-federal funds. Cost sharing contributions can be in the form of cash contributions, fees for services or in-kind contributions.

The estimated cost of this project includes the maximum federal participation and the minimum amount

required for non-federal participation as included in the following description of this project.

CLOSING DATE: June 14, 1982—Closing date for submitting applications.

ADDRESS: Dallas Regional Office, Minority Business Development Agency, 1100 Commerce Street, Room 7B19, Dallas, Texas 75242.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Williams at (214) 767-8001.

(1) A cooperative agreement for BDC services to operate in the Salt Lake City, Utah (SMSA) counties of Davis, Salt Lake, Tooele and Weber. The total cost will not exceed \$170,000 including a maximum of \$153,000 in federal funds and a minimum non-federal participation of \$17,000. The anticipated start date of the project is August 1, 1982 and the Project I.D. number is 08-10-82017-01.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of This Announcement

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The BDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA offers a Cooperative Agreement that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit—through which and from which information and assistance to and about minority businesses are funneled. Legal services are excluded.

B. Eligible Applicants

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an MBDA review panel.

D. Evaluation Criteria for Business Development Center Application

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest

evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. Capability and Experience of Firm/Staff. Provide information that demonstrates the organization's capabilities and prior experience in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experience in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

- The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)
- Background credentials and references for the owners of the organization and a capability statement of what the organization can do.
- Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local public and private entities—that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

- List personnel to be used. Indicate their salaries, educational level and previous experiences. Provide resumes for all professional staff personnel.
- Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint ventures.
- Provide organization chart, job descriptions and qualification standards involving all professional staff persons to be utilized on the project.

—If any contractors are to be utilized; identify and indicate areas and level of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. Techniques and Methodology—specify plans for achieving the goals and objective of the project. This section should be developed by using the outline of the Work Requirements and the BDC responsibilities as guides and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; developing and maintaining the profile inventory of minority business; and brokering of new business ownership, market and capital opportunities. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. Resources—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 10% cost sharing requirement to include a fee for services for assistance provided clients. The fee for services will be 10% for firms with gross sales of \$500,000 or less and 25% for firms with gross sales of over \$500,000.

Cost sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost sharing are key factors that will be considered in determining the merit of this section. The cost sharing requirement can be met through the following order of priority: 1. cash contributions; 2. fee for services; and 3. in-kind contributions.

A. Cash contribution—means cash that is contributed or donated by the recipient, by other non-federal, public agencies and institutions, private organizations, corporations and individuals.

B. Fee for services—are charges to the client for assistance provided by BDC.

C. In-Kind contribution—represent the value of non-cash contributions provided by the recipient and non-federal parties. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with

Federal funds will not be considered as the recipient's in-kind contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost sharing plan information in terms of methodology and format for billing the cost of management and technical assistance to clients.

Total project costs will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and

—The extent to which the applicant can leverage federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of BDC operations should be included in Part Two. Part Two will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement award.

A detailed justification of all proposed costs is required for Part Four and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and consequently, dropped from competition.

All information submitted is subject to verification by MBDA.

E. Disposition of Proposals

Notification of awards will be made by the Grants Officer. Organizations whose proposals are unsuccessful will be advised by the Regional Director.

F. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants. The program is subject to OMB Circular A-95 requirements.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Dated: May 7, 1982.

Richard H. Sewing,
Regional Director.

[FR Doc. 82-13025 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Meeting Cancellation

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: Notice of meeting cancellation.

SUMMARY: The scheduled public meeting of the New England Fishery Management Council, on May 24-25, 1982, as published in the *Federal Register* on May 4, 1982 (47 FR 19198), has been cancelled.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617) 231-0422.

Dated: May 7, 1982.

E. Craig Felber,

Chief, Management Services Staff, National Marine Fisheries Service.

[FR Doc. 82-12911 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Title I, Elementary and Secondary Education Act; Intent To Repay the Milwaukee Public Schools, Milwaukee, Wisconsin, Funds Recovered as a Result of a Final Decision of the Former U.S. Commissioner of Education

AGENCY: Education Department.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act, the Secretary intends to repay under a grantback arrangement to the Milwaukee Public Schools, Milwaukee, Wisconsin, an amount equal to 75 percent of funds recovered by the Department of Education as a result of a February, 1980 final decision by the former U.S. Commissioner of Education. This notice describes the LEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All comments must be received on or before June 11, 1982.

ADDRESS: All written comments should be submitted to Wilbert Cheatham, Acting Director, Division of Program Review, Compensatory Education Programs, U.S. Department of Education,

400 Maryland Avenue, S.W. (Room 3642-E, ROB-3), Washington, D.C. 20202-3305.

FOR FURTHER INFORMATION CONTACT: Wilbert Cheatham, telephone (202) 245-2506.

SUPPLEMENTARY INFORMATION:

A. Background

The United States Department of Health, Education, and Welfare Audit Agency conducted an audit of the Title I program of the State of Wisconsin Department of Public Instruction (SEA) for the period of September 1, 1967 through August 31, 1972 (A.C.N. 05-40070). The final audit report, dated June 24, 1974, found that the Milwaukee Public Schools (LEA) supplanted State and local funds with Title I funds for summer school programs in Title I project areas, in violation of 20 U.S.C. 241e(a)(1) of the Title I statute and 45 CFR 116.17(h) of the Title I regulations. In addition, the audit report found that the LEA had expended Title I funds for field trips and an instructional lab which served the general student population, in violation of 20 U.S.C. 241e(a)(3) of the Title I statute and 45 CFR 116.17(g) of the Title I regulations.

In a final determination letter dated December 16, 1975, the Deputy Commissioner for School Systems (now the Assistant Secretary for Elementary and Secondary Education) of the U.S. Office of Education (now the U.S. Department of Education (ED)) sustained the auditors' findings and ordered the SEA to refund \$3,319,989, of which \$120,286 represents the amount of improperly expended Title I funds by the Milwaukee LEA in Fiscal Years 1971 and 1982.

On April 16, 1976, the SEA filed an application for review of the Deputy Commissioner's final determinations with the Title I Audit Hearing Board (now the Education Appeal Board). In a decision dated December 4, 1979 (Docket No. 8-(23)-76), a three member panel of the Education Appeal Board upheld the Deputy Commissioner's final determinations ordering the SEA to refund \$120,286 of improperly expended Title I funds to ED. In February of 1980 the decision of the Education Appeal Board became the final decision of the former U.S. Commissioner of Education. In May of 1980, the SEA refunded to ED the entire amount of the claim.

B. Authority for Awarding a Grantback

Section 456(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e, provides that whenever the Commissioner (now Secretary) has recovered funds following a final audit

determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that (1) the practices and procedures of the LEA that resulted in the audit determination have been corrected, and that the LEA is in all other respects in compliance with the requirements of the applicable program; (2) the LEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and (3) the use of the funds to be awarded under the grantback arrangement in accordance with the LEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

In a document dated October 21, 1981, the SEA formally requested that repayment of \$90,199 under a grantback arrangement be made to the LEA. The SEA included in its request a detailed budget prepared by the LEA for the expenditure of the funds to be awarded under the grantback arrangement. In a letter dated December 3, 1981, the SEA provided an assurance that the practices and procedures of the LEA that resulted in the audit determination have been corrected. The SEA also agreed in that letter to maintain separate accounting records documenting its expenditures of funds awarded under the grantback arrangement. The SEA has also assured, in a letter dated January 28, 1982, that the LEA is in all other respects in compliance with the requirements of the Title I program.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with Section 456(a)(2) of GEPA, the SEA, in its October 21, 1981 request, submitted a plan on behalf of the LEA explaining the LEA's intent to use the funds for which it sought the grantback. The plan demonstrates that the LEA conducted a needs assessment for school year 1981-1982 of its Title I students in grades one through eight and

determined that reading and language skills were the areas of highest educational priority. The LEA proposes to expend the grantback funds during the current school year for an existing Title I reading project. This project provides supplemental services for its Title I participants in grades one through six, through small group and in-class instruction in reading and language skills. It is scheduled to end earlier than anticipated, due to reductions in the LEA's Title I budget. The LEA intends to use the grantback funds to extend the reading project for an additional five to six days.

The SEA recognizes that, generally, funds awarded under a grantback arrangement are to be used to establish a separate project designed to benefit, to the extent possible, the population that was affected by the misexpenditures that resulted in the audit exception. However, the SEA suggests that, in this case, the use of grantback funds to establish a separate project is not practical for several reasons. First, there are, most likely, no children currently enrolled in the LEA who could have been affected by the original misexpenditures, since those misexpenditures occurred over a decade ago. Therefore, the LEA is precluded from setting up a project designed to benefit the children who were affected by the original misexpenditures. Secondly, the amount of the grantback award, \$90,199, is a relatively small sum for an LEA the size of the Milwaukee Public Schools Systems, which has in excess of 12,000 participants in its Title I program and an annual budget in excess of \$9.5 million. Thus, any new project that the LEA could establish would necessarily be a small scale project serving a very limited number of children.

Based on the above reasons, the SEA concludes that a better use of the grantback funds would be to postpone the early end of an already existing project that benefits a large number of Title I students in the LEA. Specifically, the LEA proposes to expend \$87,640 on salaries and fringe benefits for 129 staff members, including supervisory personnel, teachers, paraprofessionals, and a part-time secretary; and \$2,559 on indirect costs.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request on behalf of the LEA for the repayment of funds under § 456 of GEPA, including the SEA's assurances described in Part C above and the LEA's plan and budget, the Secretary makes

the following determinations:

(1) The practices and procedures of the LEA that resulted in the audit determination have been corrected, and the LEA is in all other respects in compliance with the requirements of the Title I program;

(2) The LEA has submitted a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the Title I program; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the LEA's plan would serve to achieve the purposes of the Title I program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payments will be made.

In accordance with the above requirement, notice is given that the Secretary intends to make funds available under a grantback arrangement to the LEA in the amount of \$90,199, which represents 75 percent) the maximum percentage authorized by the statute—of the amount of funds recovered by ED as a result of the Commissioner's final decision. The Secretary bases his intention to award the maximum amount possible of grantback funds under section 456 of GEPA on the following factors: The Secretary's determinations outlined in Section E of this notice; the timely payment by the SEA of all funds owned to ED as a result of the Commissioner's final decision; and the cooperative efforts of both the SEA and LEA to bring this matter to a satisfactory resolution.

G. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to terms and conditions which the Secretary deems necessary to accomplish the purposes of the affected programs,

including the submission of periodic reports on the use of the repaid funds, and evidence that the SEA or LEA has consulted with parents or representatives of the population that will benefit from the grantback award.

The SEA and the LEA agree to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted in conjunction with the October 21, 1981 request, and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan.

(2) Pursuant to section 456(c) of GEPA, all funds received under a grantback arrangement must be obligated not later than September 30, 1983, which is three fiscal years following the fiscal year in which the Commissioner's final decision was made.

(3) The SEA, on behalf of the LEA, must, not later than January 1, 1984, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been spent;

(b) Shows that the funds awarded under the grantback have been liquidated;

(c) Describes the results and effectiveness of the project for which the funds were spent; and

(d) Describes the consultation with parents or representatives of the population that will benefit from the grantback payments.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on the notice of intent to award funds under a grantback arrangement to the Milwaukee Public Schools. Interested persons may send written comments to Wilbert Cheatham at the address at the beginning of this notice. All comments must be received on or before June 11, 1982.

Dated: April 28, 1982.

T. H. Bell,
Secretary of Education.

[FR Doc. 82-11830 Filed 5-11-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Era Docket No. 82-03-NG]

Natural Gas Imports; Flormex Energy Corp.; Application for Authorization to Import Natural Gas from Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas from Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the application of Flormex Energy Corporation (Flormex) to import natural gas from Petroleos Mexicanos (Pemex), the Mexican state petroleum company. Flormex proposes to import and resell to domestic gas suppliers up to 150,000 Mcf per day of natural gas for an initial contract term of six years.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATE: Protests or petitions to intervene are to be filed no later than 4:30 p.m. June 11, 1982.

FOR FURTHER INFORMATION CONTACT:

John W. Glynn (Oil and Gas Imports Division), Economic Regulatory Administration, 12th & Pennsylvania Avenue, NW., Federal Building, Room 6144, RG-631, Washington, D.C. 20461, (202) 633-9296

Sue D. Sheridan (Office of General Counsel, Natural Gas and Mineral Leasing), 1000 Independence Avenue, SW., Forrestal Building, Room 6E-042, Washington, D.C. 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION:

On March 22, 1982, Flormex filed with the ERA an application to import natural gas from Mexico. On April 15, 1982, Flormex amended its March 22 application with respect to the proposed volumes to be imported. Under its present proposal, Flormex would purchase a daily quantity of 150,000 Mcf of natural gas for sale to as yet unidentified domestic gas suppliers for ultimate resale to U.S. customers.

Flormex states in its import application that Pemex will not enter into a formal written agreement for the sale of natural gas until Flormex has obtained the necessary approvals to import gas from the U.S. regulatory authorities. However, the application states further that Pemex will "enter into formalization of negotiations" with

Flormex once the company has filed with the ERA, and that Pemex is ready to enter into binding agreements once U.S. regulatory approval is obtained. Additionally, Flormex indicates that Pemex will provide contract documentation if required by the ERA.

The import application states that Flormex and Pemex have agreed that any contract between the two parties would contain the following general provisions. First, the primary term of the natural gas purchase contract would be for six years, with an option for Flormex to renew for an additional six-year period. Second, the initial contract price would be U.S. \$4.94 per MMBtu, which would be subject to quarterly adjustments, the mechanism for which is not clearly explained in the application.

Flormex states that it does not intend to own or operate any facilities necessary for the transportation of the gas and that proposed importation would utilize only existing domestic facilities. The natural gas will come from new gas fields in Tamaulipas, Mexico, and be transported by Pemex to three proposed points of interconnection on the international border near Eagle Pass, Texas, Laredo, Texas, and Reynosa, Texas. In support of its application, Flormex states that many forecasts project a continuing decline in the U.S. gas reserves, and that there is a "clear" need for the gas and the proposal therefore is not inconsistent with the public interest. Furthermore, Flormex contends that the gas supply made available by this proposed import would "enhance the ability to meet winter peak day and seasonal demands of the consumer" while lessening the country's dependence on imported fuel oil.

Other Information

Any person wishing to become a party to the proceeding, and thus to participate in any conference or hearing which might be convened, must file a petition to intervene. Any person may file a protest with respect to this application. The filing of a protest will not serve to make the protestant a party to the proceeding. Protests will be considered in determining the appropriate action to be taken on the application.

All protests and petitions to intervene must meet the requirements specified in 18 CFR 1.8 and 1.10, respectively. They should be filed with the Natural Gas Branch, Oil and Gas Imports Division, Economic Regulatory Administration, Room 6144, RG-631, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461. All protests and

petitions to intervene must be filed no later than 4:30 p.m. June 11, 1982.

A hearing will not be held unless a motion for a hearing is made by a party or person seeking intervention and granted by ERA, or if ERA on its own motion believes that a hearing is necessary or required. A person filing a motion for a hearing should demonstrate how a hearing will advance the proceedings. If a hearing is scheduled, ERA will provide notice to all parties and persons whose petitions to intervene are pending.

A copy of Flormex's application is available for inspection and copying in the Natural Gas Branch Docket room, Room 6144, 12th & Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 5, 1982.

James W. Workman,
Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12914 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-014; FC Case No. 55119-9197-01-12]

General Motors Corp.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition from General Motors Corporation for exemption and availability of certification.

SUMMARY: On April 2, 1982, General Motors Corporation (GM) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new Major Fuel Burning Installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which prohibit the use of petroleum and natural gas as a primary energy source in certain new MFBI's. GM requested a permanent exemption for certain fuel mixtures containing natural gas or petroleum. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA was published in the *Federal Register* at 46 FR 59872 (December 7, 1981).

The new MFBI for which the petition is filed is a field-erected boiler (designated as Boiler No. 4) which has been installed at GM's Delco Products

Division plant in Kettering, Ohio and is designed to burn coal, natural gas or oil.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rule.

A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available for inspection upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the *Federal Register*.

DATE: Written comments on GM's petition are due on or before June 28, 1982. A request for public hearing must also be made within the 45-day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585

Docket No. ERA-FC-82-014 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: Anthony Wayne, Office of Fuels

Programs, Economic Regulatory Administration, Forrestal Building, Room GA-037, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252-1730
Douglas Mitchell, Esquire, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252-2967

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, 12th and Pennsylvania Avenue, Room 7120, Federal Building, Washington, D.C. 20461, Telephone (202) 633-8755

SUPPLEMENTARY INFORMATION: The Powerplant and Industrial Fuel Use Act of 1978 prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's unless an exemption from the prohibitions in Title II has been granted by ERA. The unit which is the subject of this exemption petition is a field erected boiler, identified as Boiler No. 4, installed by GM at its Delco plant as part of an expansion of operations which occurred over the past two years. Boiler No. 4 produces 120,000 pounds of steam per hour, has a designed heat input rate of 144 million Btu's per hour, and is capable of burning coal, natural gas or oil. GM states that the steam generated by the unit will be used for process equipment, for auxiliary powerhouse steam and for building heating and air conditioning, as well as for light steam demand periods. GM further states that the unit will be using a coal-natural gas mixture as a primary energy source (with oil as a backup to natural gas). The coal will be used alternately with natural gas. GM is, therefore, requesting a permanent fuel mixtures exemption for Boiler No. 4 to permit it to burn petroleum or natural gas in amounts up to 25% of the total annual Btu heat input of the installation as the primary energy source.

Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. In accordance with 10 CFR 503.38(d) of the final rule, GM has provided the following:

(1) A duly executed certification stating that the amount of petroleum or natural gas proposed to be used as a primary energy source in the mixture will not exceed twenty-five (25) percent of the total annual Btu heat input of the installation; and

(2) The environmental certifications as required under § 503.13(b) of the final rule.

Pursuant to 10 CFR 501.3, ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from GM at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4) of the final rule, the acceptance of the petition by ERA does not constitute a determination that GM is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE Guidelines implementing those regulations (45 FR 20694, March 28, 1980). NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C., on May 4, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc 82-12915 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

Getty Oil Co.; Proposed Consent Order

AGENCY: Economic Regulator Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Office of the Special Counsel (OSC) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Getty Oil Company ("Getty"). The Consent Order resolves all issues not resolved by previous Consent Orders, except for those matters explicitly excluded, relating to Getty's compliance with the DOE Petroleum Price and Allocation Regulations for the period January 1, 1973 through January 27, 1981, when crude oil and petroleum products were decontrolled by Executive Order 12287, 46 FR 9909 (January 30, 1981). To remedy any violations that may have occurred during the period, Getty has agreed to make payments totalling \$3,050,000 to the U.S. Treasury.

As required by the regulation cited above, OSC will receive comments on the Consent Order for a period of not less than 30 days following publication of this notice. OSC will consider any comments received before determining whether to make the Consent Order final. Although the Consent Order has been signed and accepted by the parties, the OSC may, after the expiration of the

comment period, withdraw its acceptance of the Consent Order and attempt to obtain a modification of the Consent Order or, if appropriate, issue the Consent Order as proposed.

COMMENTS: To be considered, comments must be received by 5:00 p.m. on the thirtieth day following publication of this notice, June 11, 1982.

ADDRESS COMMENTS TO: Getty Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 5109, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1200 Pennsylvania Avenue, NW., Room 3115, Washington, D.C. 20461, Phone: (202) 633-9165.

Copies of the Consent Order may be received free of charge by written request to: Getty Consent Order Request, Office of Special Counsel, Department of Energy, Room 5109, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, Room 1E-190, Washington, D.C.

SUPPLEMENTARY INFORMATION: Getty is a major refiner subject to the audit jurisdiction of the OSC to determine compliance with DOE Petroleum Price and Allocation Regulations (Regulations). Getty engages in, among other things, the importation, production, refining and marketing of crude oil and refined petroleum products. An audit conducted by OSC of Getty included a review of Getty's records relating to compliance with the Regulations during the period January 1, 1973 through January 27, 1981 (the audit period). During the audit, questions and issues were raised. This Consent Order resolves all administrative and civil issues not previously resolved concerning the allocation and sale of covered petroleum products during the audit period, except that this Consent Order does not cover matters specifically excluded in the Consent Order.

Conclusion of OSC Audit

The Consent Order addresses all aspects of Getty's compliance with the applicable Regulations. OSC's audit reviewed Getty's pricing and allocation policies and procedures and the manner in which Getty applied the Regulations with respect to, among other things, its production, refining, processing,

importation and marketing of crude oil and covered products.

At the conclusion of the audit, OSC raised certain issues with respect to Getty's compliance with the Regulations. Notwithstanding DOE's position, Getty maintains that it has correctly construed and applied the Regulations. The parties desire, however, to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this Consent Order provide a satisfactory resolution of disputed issues and an appropriate conclusion of the Getty audit, and thus, that the Consent Order is in the public interest.

Terms and Conditions of the Consent Order

To remedy any violations that may have occurred during the audit period, Getty has agreed to the following:

1. Within fifteen (15) days after the effective date of this Consent Order, Getty shall remit \$3,050,000 to the United States Treasury to be deposited as miscellaneous receipts.

2. The Consent Order settles all matters arising from Getty's sales of covered products during the settlement period with certain exceptions relating to "Getty Oil Company v. DOE," Civ. No. 77-434 (D. Del.) and Getty's obligations under DOE's Entitlements Program.

The Consent Order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the Consent Order. Among other things, DOE reserves the right to initiate enforcement proceedings and to seek appropriate penalties for any newly discovered regulatory violations committed by Getty, but only on the ground that Getty knowingly concealed such violations.

Upon becoming final after consideration of public comments, the Order will be a final order of DOE to which Getty has waived its right to administrative or judicial review. The Consent Order does not constitute an admission by Getty nor a finding by OSC of a violation of any Federal petroleum price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this Consent Order to the address noted above. All comments received by 5:00 p.m. on the thirtieth day following publication of this notice will be considered by OSC before determining

whether to adopt the Consent Order as a final order. Any modifications to the Consent Order that, in the opinion of OSC, significantly change the terms or impact of the Consent Order will be published for comments. After consideration of public comments by DOE, the Consent Order will be made final and effective by actual notice to that effect to Getty. Pursuant to 10 CFR 205.199(c), DOE will promptly publish in the *Federal Register* notice of any action taken on this Consent Order and an appropriate explanation of the action.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C. May 3, 1982.

Milton C. Lorenz,
Special Counsel, Economic Regulatory
Administration.

[FR Doc 82-12840 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-011; OFC Case No. 65033-9218-01-12]

Northwestern University; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition from Northwestern University for exemption and availability of certification.

SUMMARY: On April 6, 1982, Northwestern University (Northwestern) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent site limitations exemption for a new major fuel burning installation (MFBI) from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBI's. Final rules for petitioning for an exemption from the prohibitions of FUA were published in the *Federal Register* at 46 FR 59890 (December 7, 1981).

The MFBI for which the petition is filed is a gas-fired high pressure steam boiler (identified as unit #4) to be installed at Northwestern's campus Central Utility Plant located at Evanston, Illinois. Unit #4 has a design heat input rate of 172,580,114 BTU's per hour.

ERA has determined that the petition and certification for the requested

exemption is complete in accordance with the final rules and hereby accepts the petition for the permanent exemption as adequate for filing.

ERA retains the right to request additional relevant information from Northwestern at any time during the pendency of these proceedings where circumstances of procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTAL INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding are available for inspection upon request through DOE, Freedom of Information Reading Room, 1000 Independence Ave., SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 AM—4:00 PM.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the *Federal Register*.

DATE: Written comments are due on or before June 28, 1982. A request for public hearing must also be made within the same 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to: Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-82-011 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: William H. Freeman, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, 1000 Independence Avenue, SW, Room GA-073B, Washington, D.C. 20585, Telephone (202) 252-2993
Douglas F. Mitchell, Assistant General Counsel for Coal Regulations, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW,

Washington, D.C. 20585, Telephone (202) 252-2967

Jack Vandenberg, Office of Public Information, Department of Energy, 12th and Pennsylvania Avenue, Room 7120, Washington, D.C. 20461, Telephone (202) 633-8755

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas and petroleum as a primary energy source in certain new MFBI's unless an exemption from this prohibition has been granted by ERA.

Northwestern proposes to install a high pressure steam boiler of 150,000 lbs/hr. capacity at its campus Central Utility Plant (CUP) located in Evanston, Illinois. Unit #4 has a design heat input rate on gas of 172,580,114 Btu/hr.

CUP currently has three 100,000 lbs/hr. boilers which supply all required steam, heating water and chilled water to 101 buildings now connected to the underground distribution systems which extend ½ mile in three directions. The fourth boiler is needed to provide enough plant capacity to hold one boiler in reserve during periods of high heating loads.

Section 212(a)(1)(B) of the Act provides for a permanent exemption due to site limitations. In accordance with 10 CFR 503.33(a), Northwestern has certified the following:

(1) That the physical limitations listed in the exemption request do exist and that despite good faith efforts they cannot reasonably be expected to be overcome within five years after the commencement of operations;

(2) The use of mixtures in the proposed new MFBI is not feasible as required under 10 CFR 503.9.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Northwestern is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*, and DOE Guidelines implementing those regulations (45 FR 20694, March 28, 1980). NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an environmental assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is determined to be required, ERA will

publish a Notice of Intent to prepare an EIS in the *Federal Register* as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C., on May 4, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-12917 Filed 5-11-82; 9:45 am]

BILLING CODE 6450-01-M

Secor Petroleum Co., Inc., 6COX00297; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Secor Petroleum Company, Inc. (Secor), 333 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. This Proposed Remedial Order charges Secor with layering violations and charging prices in excess of its permissible average markup in connection with its resales of crude oil during the period November 1979 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

On or before May 27, 1982, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Okla., on the 23rd day of April 1982.

John W. Sturges,

Director, Tulsa Office, Economic Regulatory Administration.

[FR Doc. 82-12841 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-82-010; FC Case No. 55172-9221-20-24]

Kimberly-Clark Corp.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition from Kimberly-Clark Corporation for exemption and availability of certification.

SUMMARY: On April 1, 1982, Kimberly-Clark Corporation (K-C) filed a petition with the Economic Regulatory

Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for an electric powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the *Federal Register* at 46 FR 59872 (December 7, 1981).

K-C proposes to install a 20.1 megawatt gas-fired combustion turbine, with oil backup, and a 3.5 MW steam turbine with heat recovery steam generator to produce electricity for sale to Southern California Edison Company and steam for the company's production process.

ERA has determined that the petition and certification of the requested exemption is complete in accordance with the final rule.

A review of the petition is provided in the SUPPLEMENTAL INFORMATION section below.

As provided for in Section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the *Federal Register*.

DATE: Written comments are due on or before June 28, 1982. A request for a public hearing must also be made within the same 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing should be submitted to:

Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-82-010 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Joseph R. DeVries, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6002

Henry Garson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-187, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-2967

Jack Vandenberg, Office of Public Information, Economic Regulatory Administration, Department of Energy, Room 7120, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Telephone (202) 633-8755

SUPPLEMENTARY INFORMATION: K-C plans to install a 23.6 MW gas-fired (with oil back-up) cogeneration powerplant to produce electricity and steam at its Fullerton, California mill. The cogeneration facility will consist of a 20.1 MW General Electric LM 2500 gas turbine generator connected to a 3.5 MW steam turbine and a heat recovery steam generator. The gas turbine has a design heat input rate of 197.7 MMBTU's per hour. The heat recovery steam boiler will receive no supplemental firing. All the electricity produced by the gas turbine will be sold to the Southern California Edison Company.

K-C will also purchase approximately 12 MW of electricity from Southern California Edison Company in most years. This electricity, along with the heat exhaust from the turbine, will be utilized to provide power and steam to K-C's mill. K-C estimates that the cogeneration facility will consume up to 1,708,128 MMBTU's of natural gas per year. Section 212(c) of the Act provides for a permanent exemption for cogeneration. In accordance with 10 CFR 503.37(a)(1) of the final rule, K-C certified that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility; and

2. The use of a mixture of oil and gas and an alternate fuel in the cogeneration facility is not feasible.

In accordance with the evidentiary requirements of 10 CFR 503.37(c), K-C has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and
2. An environmental impact analysis, as required under 10 CFR 503.13 of the final rule, including a description of the facility and its proposed operations and fuel capability, a description of the existing environment, direct and indirect environmental impacts of the proposed action, and a description of Federal, State and local requirements for air, water, noise and solid waste disposal which must be met for the proposed facility.

Pursuant to 10 CFR 501.3, ERA hereby accepts the filing of the petition for the permanent exemption as adequate for

filing. ERA retains the right to request additional relevant information from K-C at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4) of the final rule, the acceptance of the petition by ERA does not constitute a determination that K-C is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*, and DOE Guidelines implementing those regulations (45 FR 20694, March 28, 1980). NEPA compliance may involve the preparation of (1) an environmental

impact statement (EIS); (2) an environmental assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the *Federal Register* as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C., on May 4, 1982.

James W. Workman,
*Director, Office of Fuels Programs, Economic
Regulatory Administration.*

[FR Doc. 82-12916 Filed 5-11-82; 8:45 am]
BILLING CODE 6450-01-M

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 5, 1982.

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
*****	*****	*****	*****	*****	*****	*****	*****	*****
LOUISIANA OFFICE OF CONSERVATION								
*****	*****	*****	*****	*****	*****	*****	*****	*****
-AMERADA HESS CORPORATION	8227786	81-2078	1758120360	RECEIVED: 04/16/82	JAS: LA	ALPHA	365.0	UNITED GAS PIPE L
-AMINOIL OF LOUISIANA INC	8227785	81-2050	1707522711	RECEIVED: 04/16/82	JAS: LA	LAKE WASHINGTON	506.0	SOUTHERN NATURAL
-HILLIARD OIL & GAS INC	8227784	81-1990	1707522711	102-4 103	S/L 2028 #17	LAKE WASHINGTON	1800.0	SOUTHERN NATURAL
-HOGAN EXPLORATION INC	8227781	81-1399	1707522813	RECEIVED: 04/16/82	JAS: LA	POINTE A LA HACHE	730.0	
-HOGAN EXPLORATION INC	8227783	81-1648	1702120733	RECEIVED: 04/16/82	JAS: LA	SOUTH GRAYSON	60.0	LOUISIANA INTRAST
-HOGAN EXPLORATION INC	8227782	81-1647	1702120753	102-4	R L FORE #1	SOUTH GRAYSON	40.0	LOUISIANA INTRAST
*****	*****	*****	*****	*****	*****	*****	*****	*****
MICHIGAN DEPARTMENT OF NATURAL RESOURCES								
*****	*****	*****	*****	*****	*****	*****	*****	*****
-MILLER BROTHERS	8227773	2110533494	RECEIVED: 04/12/82	JAS: MI	FUGERE #8-13	FUGERE #8-13	108.0	DDW CHEMICAL CO
-SOUTHERN MICHIGAN PRODUCTION CO	8227774	2116534245	102-4	MILLER BROTHERS	MCPHILLIPS #3-20	MCPHILLIPS #3-20	365.0	CONSUMERS POWER C
-SUN OIL COMPANY (DELAWARE)	8227775	2102500000	RECEIVED: 04/12/82	JAS: MI	LEE-24	LEE-24	250.0	MICHIGAN GAS UTIL
-SUN OIL COMPANY	8227777	2108933810	103	HGU 1-24	RICH	RICH	23.0	SOUTHEASTERN MICH
-SUN OIL COMPANY	8227780	2108734152	103	RICH FIELD UNIT TRACT 13 #5	RICH	RICH	11.0	SOUTHEASTERN MICH
-SUN OIL COMPANY	8227779	2108734151	103	RICH FIELD UNIT TRACT 18 #2	RICH	RICH	12.0	SOUTHEASTERN MICH
-SUN OIL COMPANY	8227778	2108734117	103	RICH FIELD UNIT TRACT 33 #2	RICH	RICH	24.0	SOUTHEASTERN MICH
-SUN OIL COMPANY	8227776	2108733730	103	RICH FIELD UNIT TRACT 42 #2	RICH	RICH	18.0	SOUTHEASTERN MICH
*****	*****	*****	*****	*****	*****	*****	*****	*****
OKLAHOMA CORPORATION COMMISSION								
*****	*****	*****	*****	*****	*****	*****	*****	*****
-ANADARKO PRODUCTION COMPANY	8227896	13521	3500320867	RECEIVED: 04/15/82	JAS: OK	S E LAMBERT	110.0	PIONEER GAS PRODU
-ANADARKO PRODUCTION COMPANY	8227807	13520	3500320864	PAGE A-2	ROZELL A-2	S E LAMBERT	110.0	PIONEER GAS PRODU
-ANADARKO PRODUCTION COMPANY	8227808	13519	3500320890	SCHALLNER A-2	SCHALLNER A-2	S E LAMBERT	110.0	PIONEER GAS PRODU
-BOBBY J DARNELL	8227847	13563	3508320911	RECEIVED: 04/16/82	JAS: OK	NE RUSSELL	0.7	EASON OIL CO
-BROCK HYDROCARBONS INC	8227831	08276	3507720206	RECEIVED: 04/16/82	JAS: OK	WILBURTON	6.0	ARKANSAS LOUISIAN
-BROCK HYDROCARBONS INC	8227833	08275	3507720206	BILLY HICKMAN #1-34	BILLY HICKMAN #1-34	WILBURTON	0.0	ARKANSAS LOUISIAN
-CHASE EXPLORATION CORP	8227826	12461	3507121047	RECEIVED: 04/16/82	JAS: OK	UNNAMED	0.4	CITIES SERVICE GA
-CIMARRON PETROLEUM CORPORATION	8227811	13419	3505921075	KUCERO #1-14	KUCERO #1-14	UNNAMED	547.5	MICHIGAN-WISCONSIN
-CIMARRON PETROLEUM CORPORATION	8227811	13419	3505921075	RECEIVED: 04/15/82	JAS: OK	UNNAMED	547.5	MICHIGAN-WISCONSIN
-CONTINENTAL RESOURCES CORP	8227811	13419	3505921075	HINTHER CPC #95-4	HINTHER CPC #95-4	UNNAMED	547.5	MICHIGAN-WISCONSIN
-CONTINENTAL RESOURCES CORP	8227811	13419	3505921075	RECEIVED: 04/15/82	JAS: OK	UNNAMED	547.5	MICHIGAN-WISCONSIN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	VOLUME	PAGE	PROD	PURCHASER
8227827	11605	3504321226	102-4		OAKES #1	PUTNAM	644	003	0.0	
8227843	13572	3504722623	103		TOEWS #1	SW KREMLIN			60.0	
8227844	13541	3509322155	103	RECEIVED: 04/16/82	DIXIE #1	RINGWOOD			54.0	PIONEER GAS PRODU
8227790	14313	3510524609	102-2	RECEIVED: 04/15/82	COOK #1				9.0	CITIES SERVICE GA
8227787	14314	3510524610	102-2		COOK #2				8.0	CITIES SERVICE GA
8227791	14312	3510524611	102-2		GREENFIELD #1				8.0	CITIES SERVICE GA
8227792	14311	3510524674	102-2		LYNN #3				7.0	CITIES SERVICE GA
8227788	14315	3510524422	102-2		MILLIGAN #2				22.0	CITIES SERVICE GA
8227789	14316	3510524421	102-2		MILLIGAN #3				20.0	CITIES SERVICE GA
8227794	14309	3510524422	102-2		WATTENBARGER #1				7.0	CITIES SERVICE GA
8227793	14310	3510524869	102-2		WATTENBARGER #2				8.0	CITIES SERVICE GA
8227835	5756	3501120990	102-4	RECEIVED: 04/16/82	JONES #1	E FAYE			100.0	MICHIGAN WISCONSI
8227841	13649	3507300000	108	RECEIVED: 04/16/82	TAGGART NO 3	HENNESSEY EAST			18.1	EXXON CO USA
8227810	13510	3515121109	103	RECEIVED: 04/15/82	HALLORY 2-6	N W AVARD			470.0	PANHANDLE EASTERN
8227846	13564	3515321083	103	RECEIVED: 04/16/82	RORING #2-29	FREEDOM 76			128.0	PANHANDLE EASTERN
8227812	13488	3504722415	103	RECEIVED: 04/15/82	WALTA #1	SOONER TREND			31.0	ONG WESTERN INC
8227852	13534	3507323231	103	RECEIVED: 04/16/82	GRAVITT #1-30	OKARCHE NORTH			0.0	DELHI GAS PIPELIN
8227853	13535	3509322063	103		WRIGHT #1-33	RINGWOOD			25.0	
8227813	13517	3507323260	103	RECEIVED: 04/15/82	E F REHERMAN NO 1	OKARCHE NORTH POOL			250.0	CONOCO INC
8227839	13676	3512920376	108	RECEIVED: 04/16/82	TAYLOR #1				18.0	EL PASO NAT'L GAS
***** WEST VIRGINIA DEPARTMENT OF MINES *****										
8227882		4703301106	108	RECEIVED: 04/19/82	A - 672	SARDIS DISTRICT			0.0	CONSOLIDATED GAS
8227879		4701701891	108		A - 746	SOUTHWEST DISTRICT			0.0	CONSOLIDATED GAS
8227883		4709100166	108		A - 756	KNOTTSVILLE DISTRICT			0.0	CONSOLIDATED GAS
8227884		4709701877	108		A - 779	UNION DISTRICT			0.0	CONSOLIDATED GAS
8227885		4709702002	108		A - 850	WASHINGTON DISTRICT			0.0	CONSOLIDATED GAS
8227889		4701702526	108		A - 855	MCCLELLAN DISTRICT			0.0	CONSOLIDATED GAS
8227881		4701702549	108		A - 861	SOUTHWEST DISTRICT			0.0	CONSOLIDATED GAS
8227878		4709702029	108		A - 865	WASHINGTON DISTRICT			0.0	CONSOLIDATED GAS
8227877		4709702053	108		A - 881	WASHINGTON DISTRICT			0.0	CONSOLIDATED GAS
8227893		4703903725	107-DV	RECEIVED: 04/19/82	BERRY HILLS #4	JEFFERSON			19.0	TENNESSEE GAS PIP
8227892		4703903749	107-DV		ELLIS #2	WASHINGTON			26.0	TENNESSEE GAS PIP
8227890		4707903800	107-DV		J L MCLEAN A-32	UNION			6.0	TENNESSEE GAS PIP
8227891		4707900991	107-DV		J L MCLEAN A-45	UNION			13.0	TENNESSEE GAS PIP
8227894		4703501526	107-DV		J L MCLEAN A-55	RIPLEY			8.0	TENNESSEE GAS PIP
8227887		4703903674	107-DV		KIRK & MILLER #2	JEFFERSON			45.0	TENNESSEE GAS PIP
8227888		4710900853	103		POCAHONTAS LAND CORP I-32	BARKERS RIDGE			33.0	CONSOLIDATED GAS
8227889		4703903652	107-DV		SILER COAL & LAND A-16	WASHINGTON			30.0	TENNESSEE GAS PIP
8227886		4703903751	107-DV		TROUBRIDGE #2	WASHINGTON			38.0	TENNESSEE GAS PIP

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-CARBONIT EXPLORATION INC	4707301200	4707301200	RECEIVED:	04/19/82	HARRY G BRADFIELD #2	UNION DISTRICT ST MAR	0-0	COLUMBIA GAS TRAN
8227896			107-DV					
-CARSON PETROLEUM CORP	4702103787	4702103787	RECEIVED:	04/19/82	C C WICK #1	INDIAN FORK	25-0	CONSOLIDATED GAS
8227857			103			ST CLAIR	15-0	COLUMBIA GAS TRAN
-EASTERN AMERICAN ENERGY CORPORATION	47011702957	47011702957	RECEIVED:	04/19/82	BAILEY #1	GLENVILLE NORTH	50-0	
8227900			107-DV			GLENVILLE NORTH	10-0	CONSOLIDATED GAS
8227876			107-DV		FRYATT #1	GLENVILLE NORTH	60-0	
8227866			107-DV		HARDMAN #2	ASPINALL-FINSTER	18-0	
8227864			107-DV		MCLAUGHLIN #1	ASPINALL-FINSTER	20-0	
8227871			107-DV		MULLOOLY #1	ASPINALL-FINSTER	20-0	
8227869			107-DV		MULLOOLY #1	GLENVILLE NORTH	20-0	
8227872			103		MULLOOLY #2	GLENVILLE NORTH	20-0	
8227873			107-DV		MULLOOLY #2	GLENVILLE NORTH	21-0	
8227875			103		RAMSBURG #1	ASPINALL-FINSTER	17-0	CONSOLIDATED GAS
8227870			107-DV		ST PATRICK'S #1	GLENVILLE NORTH	17-0	CONSOLIDATED GAS
8227862			107-DV		ST PATRICK'S #1	GLENVILLE NORTH	45-0	COLUMBIA GAS TRAN
8227867			103		STEINMETZ #1	GLENVILLE NORTH	45-0	COLUMBIA GAS TRAN
8227865			107-DV		STEINMETZ #1	GLENVILLE NORTH	20-0	CONSOLIDATED GAS
8227874			103		TANEY #2	GLENVILLE NORTH	20-0	CONSOLIDATED GAS
8227863			107-DV		TANEY #2	GLENVILLE	10-0	COLUMBIA GAS TRAN
8227868			103		TANEY #2	BELINGTON	4-0	CARNEGIE NATURAL
-FOX DRILLING CO INC	4700101538	4700101538	RECEIVED:	04/19/82	SHOCKEY #2	CENTRAL DISTRICT	44-0	CONSOLIDATED GAS
8227860			103			GREENBRIER	55-0	CABOT CORP
-INDUSTRIAL GAS ASSOCIATES	4701702359	4701702359	RECEIVED:	04/19/82	HAMMER #1	TWENTY MILE CREEK	29-0	CABOT CORP
8227895			108			TWENTY MILE CREEK	0-0	COLUMBIA GAS TRAN
-JAMES F SCOTT	4701702967	4701702967	RECEIVED:	04/19/82	ROBERT HOLLAND S-330	ANNAMORIAN	0-0	CONSOLIDATED GAS
8227861			103			ELLIOTT'S RUN	22-0	COLUMBIA GAS TRAN
-TEXAS INTERNATIONAL PET CORP	4706700569	4706700569	RECEIVED:	04/19/82	FEDERAL COAL #43	MCKIM DISTRICT	300-0	NORTHWEST PIPELIN
8227898			103			RANGELY SOUTH	438-0	SOUTHWEST GAS COR
8227897			103		FEDERAL COAL #47	WILDCAT	244-0	CITIES SERVICE GA
-TWI OIL CO	4701303335	4701303335	RECEIVED:	04/19/82	ELVA THOMAS	CATHEDRAL	15-0	SOUTHWEST GAS COR
8227899			103			POWDER WASH	124-2	MOUNTAIN FUEL SUP
-UNITED OPERATING CO	4708505146	4708505146	RECEIVED:	04/19/82	FLORA OVERFIELD #1	IGNACIO - BLANCO	738-6	PEOPLE'S NATURAL
8227859			103			IGNACIO - BLANCO	746-0	NORTHWEST PIPE LI
-WARREN R HAUGHT AGENT	4707301196	4707301196	RECEIVED:	04/19/82	BEN CUNNINGHAM H-1210	IGNACIO - BLANCO	382-4	NORTHWEST PIPE LI
8227858			107-DV					

DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, DENVER, CO								

-ALTA ENERGY CORP	0507708408	0507708408	RECEIVED:	04/13/82	FEDERAL #32-1	SHIRE GULCH	300-0	NORTHWEST PIPELIN
8227770			107-TF			RANGELY SOUTH	438-0	SOUTHWEST GAS COR
-COSEKA RESOURCES (USA) LIMITED	0510308719	0510308719	RECEIVED:	04/13/82	FEDERAL #4-1-1S-102	WILDCAT	244-0	CITIES SERVICE GA
8227767			102-3			CATHEDRAL	15-0	SOUTHWEST GAS COR
-CS6 EXPLORATION COMPANY	0510308528	0510308528	RECEIVED:	04/13/82	GOVERNMENT 397-8-4	POWDER WASH	124-2	MOUNTAIN FUEL SUP
8227765			102-2			IGNACIO - BLANCO	738-6	PEOPLE'S NATURAL
-DONALD C SLAWSON	0510308648	0510308648	RECEIVED:	04/13/82	FEDERAL 35-1	IGNACIO - BLANCO	746-0	NORTHWEST PIPE LI
8227769			103			IGNACIO - BLANCO	382-4	NORTHWEST PIPE LI
-ENERGY RESERVES GROUP INC	0508106493	0508106493	RECEIVED:	04/16/82	USA PTASYSKI #5			
8227814			103					
-LADD PETROLEUM CORPORATION	0506706538	0506706538	RECEIVED:	04/16/82	SOUTHERN UTE #2-10			
8227815			103					
8227817			103		SOUTHERN UTE #3-25			
8227822			103		SOUTHERN UTE #3-25			

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	VOLUME	PAGE	PROD	PURCHASER
8227816	CD0031-82-A	0506206496	103		TRAIL CANYON #1-7	IGNACIO - BLANCO	644	505	80.5	
8227820	CD0031-82-B	0506706496	103		TRAIL CANYON #1-7	IGNACIO - BLANCO			533.5	
8227818	CD0029-82	0506206402	103		TRAIL CANYON #3-3	IGNACIO - BLANCO			252.7	
8227821	CD0037-82	0506706402	103		TRAIL CANYON #3-3	IGNACIO - BLANCO			1343.8	NORTHWEST PIPE LI
-MITCHELL ENERGY CORPORATION										
8227772	CD0043-82	0510308665	102-3		FEDERAL G-2-2-1045	WILDCAT			52.0	
-NORTHWEST EXPLORATION COMPANY										
8227819	CD0051-82	0504506380	107-YF		CLOUGH 19	RULISON MESAVERDE			150.0	NORTHWEST PIPELIN
-SUPERIOR OIL CO										
8227768	CD0540-81	0504505187	108		FEDERAL #28-95	RULISON			0.0	WESTERN SLOPE & G
-SUPERIOR OIL CO										
8227823	CD0541-81	0504505206	108		FEDERAL #3-94	RULISON			0.0	WESTERN SLOPE GAS
-TENNECO OIL COMPANY										
8227766	CD0034-82	0510308733	103		107-TF GOVERNMENT 4-26-4-102	EVACUATION CREEK			80.0	NORTHWEST PIPELIN
-TWIN ARROW INC										
8227763	CD0470-81	0510308108	108		CONTINENTAL 1-17	CATHEDRAL			16.7	IGG PRODUCTION CO
8227752	CD0199-81	0510308215	103		CONTINENTAL 3-29	CATHEDRAL			0.0	NORTHWEST PIPELIN
8227751	CD0273-81	0510308423	103		COORS 3-10	CATHEDRAL			0.0	NORTHWEST PIPELIN
8227750	CD0197-81	0510308641	103		TERRA 1-26	CATHEDRAL			0.0	NORTHWEST PIPELIN
-TXO PRODUCTION CORP										
8227753	CD0021-82	0510308776	103		04/13/82 JA: CO 1	TEXAS MOUNTAIN			252.0	
-ARI-MEX OIL & EXPLORATION INC										
8227771	UD0454-81	4301930801	103		04/13/82 JA: UT 1	GREATER CISCO-DANISH			275.0	NORTHWEST PIPELIN
-BELCO PETROLEUM CORPORATION										
8227762	UD0520-81	4304730476	102-4		04/13/82 JA: UT 1	DUCK CREEK			0.0	NORTHWEST PIPELIN
8227761	UD0519-81	4304730523	102-4		DUCK CREEK 3-16 GR 30476	DUCK CREEK			0.0	NORTHWEST PIPELIN
8227757	UD0518-81	4304730540	102-4		DUCK CREEK 5-16 GR 30523	DUCK CREEK			0.0	NORTHWEST PIPELIN
8227759	UD0521-81	4304730541	102-4		DUCK CREEK 6-16 GR 30540	DUCK CREEK			0.0	NORTHWEST PIPELIN
8227760	UD0523-81	4304730555	102-4		DUCK CREEK 7-16 GR	DUCK CREEK			0.0	NORTHWEST PIPELIN
8227756	UD0517-81	4304730556	102-4		NATURAL DUCK 2-15GR 30555	NATURAL DUCK			0.0	NORTHWEST PIPELIN
8227755	UD0522-81	4304730557	102-4		NATURAL DUCK 3-15 GR 30556	NATURAL DUCK			0.0	NORTHWEST PIPELIN
-COTTON PETROLEUM CORPORATION									0.0	COLORADO INTERSTA
-WEXPRO CO										
8227764	UD0514-81	4304731026	102-2		04/13/82 JA: UT 1	NATURAL BUTTES			0.0	NATURAL GAS CORP
8227748	UD0046-82	4303730604	102-5		HILL FEDERAL 1-10	BUG			215.0	MOUNTAIN FUEL RES
8227749	UD0048-82	4303730391	102-3		BUG #9	PATTERSON CANYON			75.0	MOUNTAIN FUEL RES
-TXO PRODUCTION CORP										
8227758	UD0022-82	4301930841	103		04/13/82 JA: UT 1	BRYSON CANYON			193.0	NORTHWEST PIPELIN
8227754	UD0023-82	4301930854	103		BAUMGARTNER FEDERAL #2	SAN ARROYO			72.0	
					CREDO FEDERAL "A" #2					

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12827 Filed 5-11-82; 8:45 am]
BILLING CODE 8717-01-C

[Volume 645]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 5, 1982.

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES								

-ALTHEIRS OIL INC			RECEIVED:	04/19/82	JA: OH	PIKE	15.0	
8227901		3412725510	103	SAFFELL/WHEATCRAFT #4				
-AMERICAN WELL MANAGEMENT COMPANY			RECEIVED:	04/19/82	JA: OH	NEWTON	18.0	
8227903		3411925881	103	107-TF HOMER WISEMAN #1				
8227902		3411925677	103	107-TF JOHN KRICHBAUM #1	CASS		18.0	
-APPALACHIAN ENERGY INC			RECEIVED:	04/19/82	JA: OH	PULTNEY	25.0	COLUMBIA GAS TRAN
8227904		3401320342	103	C WARREN #1 A-E-184	PULTNEY		25.0	COLUMBIA GAS TRAN
8227905		3401320412	103	JOE BURDYN #1 A-E-223				
-ATWOOD RESOURCES INC			RECEIVED:	04/19/82	JA: OH	JEFFERSON	15.0	
8227906		3415723697	103	107-TF SPECHT #1				
-BANDS COMPANY INC			RECEIVED:	04/19/82	JA: OH	MILLERSBURG	1.5	COLUMBIA GAS TRAN
8227910		3407523689	107-TF	JOHN MILLER #3	HARDY		1.7	COLUMBIA GAS TRAN
8227909		3407522928	107-TF	L YODER #1	MECHANIC		1.5	COLUMBIA GAS TRAN
8227908		3407526290	107-TF	YOST MILLER #1				
-BB ENERGY CORP			RECEIVED:	04/19/82	JA: OH	ELK	12.0	COLUMBIA GAS TRAN
8227907		3412122646	107-DV	ULLMAN #1				
-BELDEN & BLAKE & CO #79			RECEIVED:	04/19/82	JA: OH	ROSE	36.5	
8227911		3401921420	103	W & S FINLEY 1-341069				
-BELDEN & BLAKE AND CO L P NO 71			RECEIVED:	04/19/82	JA: OH	SUGAR CREEK	36.5	
8227913		3415123029	103	107-RT H & W MYERS-1-892	SUGAR CREEK		36.5	
8227912		3415123028	103	107-RT W & P AMES COMM-1-891				
-BEREA OIL AND GAS CORPORATION			RECEIVED:	04/19/82	JA: OH	WESTLAND	0.0	COLUMBIA GAS TRAN
8227914		3425923163	103	107-TF V FERGUSON #2				
-BLAUSER WELL SERVICE INC			RECEIVED:	04/19/82	JA: OH	LEBANON	9.7	COLUMBIA GAS TRAN
8227921		3410522168	107-DV	EDGAR BREWER #1-149				
-BUCKEYE OIL PRODUCING CO			RECEIVED:	04/19/82	JA: OH	SUGAR CREEK	12.0	COLUMBIA GAS TRAN
8227922		3416923007	103	107-TF L & L HERSHBERGER #1				
-CA D'ORA INC			RECEIVED:	04/19/82	JA: OH	DUNHAM	8.0	
8227923		3416727018	107-DV	HART #2				
-CAMERON BROS			RECEIVED:	04/19/82	JA: OH		5.0	NATIONAL GAS & OI
8227924		3411925904	108	R WILSON ET AL 76BR				
-CHANCE PETROLEUM CORPORATION			RECEIVED:	04/19/82	JA: OH	NEW LYME	3.1	
8227925		3400721901	107-TF	SUMMER-CLOSE #1				
-CLEARFORK OIL CO			RECEIVED:	04/19/82	JA: OH	WASHINGTON	10.0	COLUMBIA GAS TRAN
8227927		3411122549	107-DV	C WECKBACHER #1				
-CLINTON OIL CO			RECEIVED:	04/19/82	JA: OH	DRESDEN	10.0	
8227928		3411926067	103	107-TF D AND J MERKER #5-659				
-COASTAL PETROLEUM CORP			RECEIVED:	04/19/82	JA: OH	SEVILLE	9.0	COLUMBIA GAS TRAN
8227931		3410322883	107-TF	BROOKSIDE DEV C #3	SEVILLE		9.0	COLUMBIA GAS TRAN
8227929		3410322876	107-TF	BROOKSIDE DEV CO #1	SEVILLE		9.0	COLUMBIA GAS TRAN
8227930		3410322882	107-TF	BROOKSIDE DEV CO #2				

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8227932		3410322937	107-TF	RECEIVED: 04/19/82	WESTERN RESERVE #3	WADSWORTH	9.0	COLUMBIA GAS TRAN
8227936		3416726643	107-DV	ARMSTRONG #2	JA: OH			
8227937		3416726644	107-DV	BARBER RIGGS #2				
8227935		3411122530	107-DV	BRIGGS #1				
8227939		3416727024	107-DV	HARRY ARMSTRONG #1				
8227938		3416726765	107-DV	HAZEL HANLON #1				
8227933A		3408924249	103	HOSKINSON #2				
8227933B		3408924249	107-TF	HOSKINSON #2				
8227934A		3408924317	103	O'DONNELL #2				
8227934B		3408924317	107-TF	O'DONNELL #2				
8227941		3411122587	RECEIVED: 04/19/82	JA: OH				
8227942		3403124593	103	107-DV CURTIS BENNETT #2				
8228091		3405922699	RECEIVED: 04/19/82	JA: OH				
8228092		3405922804	107-TF	MC MULLEN #2				
8227943		3411925894	103	107-TF WALKER #1				
8227944		3407523187	RECEIVED: 04/19/82	JA: OH				
8227946A		3412725485	103	SCHLAUCH #1-3187				
8227946B		3412725485	107-TF	DONALD STOLTZ #1A				
8227945A		3412724984	103	DONALD STOLTZ #1A				
8227945B		3412724984	107-TF	PAUL MUSSEY #1				
8227947		3411522579	RECEIVED: 04/19/82	JA: OH				
8227948		3403124635	103	107-TF LAURENCE #1				
8227951		3412122713	RECEIVED: 04/19/82	JA: OH				
8227949		3409921412	103	107-TF BURLINGAME #1				
8227950		3409921435	103	107-TF SCHULTHEIS #1				
8227953		3411122444	RECEIVED: 04/19/82	JA: OH				
8227952		3411122159	107-DV	COCHRAN #1				
8227956		3416923210	RECEIVED: 04/19/82	JA: OH				
8227958		3413322795	RECEIVED: 04/19/82	JA: OH				
8227957		3413322778	103	107-TF HARPER-KOHLER #1				
8227954		3411522424	RECEIVED: 04/19/82	JA: OH				
8227955		3411522434	103	107-TF OCHWAT #1				
8227961		3411925637	RECEIVED: 04/19/82	JA: OH				
8227960		3411122269	107-DV	SCOTT HERBERT & GLORIA #3				
8227959		3411122249	RECEIVED: 04/19/82	JA: OH				
8227962		3410522214	107-DV	MC CONKEY JAMES JANICE & MARY #1				
8227963		3410522230	107-DV	SCOTT HERBERT & GLORIA #3				

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-JAMES P NOLL								
8227998		3412724611	RECEIVED: 04/19/82	JA: OH	EDWARD-WILSON #2	READING	6960.0	COLUMBIA GAS TRAN
-K S T OIL & GAS CO INC			107-TF	JA: OH				
8227966		3415320902	RECEIVED: 04/19/82	JA: OH	CUMMINGS #1	NORTHAMPTON	0.0	
8227967		3415320975	103	107-TF	GILLESPIE #1	NORTHAMPTON	0.0	REPUBLIC STEEL CO
8227964		3415322310	103	107-TF	MAUR UNIT #1	FREEDOM	0.0	
8227965		3415320874	103	107-TF	REDER-STALKER UNIT #1	NORTHAMPTON	0.0	
-KENOIL			RECEIVED: 04/19/82	JA: OH				
8227970		3416922729	107-TF	JA: OH	KENNETH BROWN #2	CANAAN	12.0	COLUMBIA GAS TRAN
8227969		3416922545	107-TF	JA: OH	VIRGIL AND DAN GASSER #2	CANAAN	16.0	COLUMBIA GAS TRAN
8227968		3416922330	107-TF	JA: OH	WINSTON WYCKOFF #1	CANAAN	18.0	COLUMBIA GAS TRAN
-LANDPROVEST INC			RECEIVED: 04/19/82	JA: OH				
8227971		3411959550	107-TF	JA: OH	W DERRY #1	NEW CONCORD	25.0	
-LEADER EQUITIES INC			RECEIVED: 04/19/82	JA: OH				
8227972		3411924922	107-TF	JA: OH	ROADRUCK #1A	MONROE	15.8	
-LOMAK PETROLEUM INC			RECEIVED: 04/19/82	JA: OH				
8227973		3411925875	103	107-TF	N MOORE #7	MUSKINGUM	12.0	ROVI RESOURCES CO
-M B OPERATING CO INC			RECEIVED: 04/19/82	JA: OH				
8227975		3415123507	103	107-TF	ARCHINAL #1	BETHLEHEM	27.4	REPUBLIC STEEL CO
8227978		3415123567	103	107-TF	CARPER FARMS #2	NIMISHILLEN	9.9	REPUBLIC STEEL CO
8227981		3415123602	103	107-TF	DAVIS UNIT #1	NIMISHILLEN	23.7	REPUBLIC STEEL CO
8227974		3415123413	103	107-TF	DUSKEY UNIT #2	STARK	65.7	REPUBLIC STEEL CO
8227980		3415123601	103	107-TF	FLINTKOTE CO #23	MARLBORO	7.3	REPUBLIC STEEL CO
8227976		3415123540	103	107-TF	FLINTKOTE CO #24	MARLBORO	7.7	REPUBLIC STEEL CO
8227977		3415123546	103	107-TF	INDORF UNIT #1	PERRY	49.3	REPUBLIC STEEL CO
8227982		3415123605	103	107-TF	MALAVITE #3	PIKE	34.7	REPUBLIC STEEL CO
8227979		3415123598	103	107-TF	MANN UNIT #1	NIMISHILLEN	9.1	REPUBLIC STEEL CO
-MORGAN-PENNINGTON INC			RECEIVED: 04/19/82	JA: OH				
8227984		3407523616	103	107-TF	ALLISON #1	MONROE	18.3	COLUMBIA GAS TRAN
8227983		3403124437	107-TF	JA: OH	M & L HERSBERGER #1	CRAWFORD	12.0	EAST OHIO GAS CO
-NATIONAL PETROLEUM CORP			RECEIVED: 04/19/82	JA: OH				
8227986		3400720960	107-TF	JA: OH	OHIO LAND & TIMBER #1	LENOX	15.0	OHIO GAS CO
8227985		3400720959	107-TF	JA: OH	OHIO LAND & TIMBER #3	LENOX	15.0	OHIO GAS CO
8227987		3400721410	107-TF	JA: OH	ZORMAN-HEMERY-PORT #1	LENOX	15.0	OHIO GAS CO
-NEW FRONTIER EXPLORATION INC			RECEIVED: 04/19/82	JA: OH				
8227988		3402920873	103	107-TF	ARMSTRONG UNIT #1	WEST	18.0	COLUMBIA GAS TRAN
8227992		3406720505	103	107-TF	BEITS-ROYER UNIT #1	MONROE	16.0	
8227990		3405923033	103	107-TF	FORREST WAGNER #1	CENTER	0.0	
8227995		3410322578	103	107-TF	JAMES KOCIS #1	WADSWORTH	18.0	AMERICAN ENERGY S
8227991		3405923255	103	107-TF	L C HOTHEN #1	MONROE	20.0	
8227989		3402920887	103	107-TF	MERLE BARRICK #1	WEST	18.0	COLUMBIA GAS TRAN
8227993		3406720513	103	107-TF	SAMUEL BETTS #2	MONROE	16.0	
8227994		3406720514	103	107-TF	SAMUEL BETTS #2	MONROE	15.0	
-NICOFIBERS INC			RECEIVED: 04/19/82	JA: OH				
8227996		3412725258	103	107-TF	NICOFIBER/CLAYCRAFT #4	SALT LICK TWP	6.0	
-NOBLE OIL CORP			RECEIVED: 04/19/82	JA: OH				
8227997		3413322750	107-TF	JA: OH	BRUMBAUGH #1	PALMYRA	20.0	GENERAL ELECTRIC
-OHIO NATURAL FUEL CO			RECEIVED: 04/19/82	JA: OH				
8227999		3416922984	107-TF	JA: OH	G & D SMITH #1	CANAAN (TWP)	10.0	COLUMBIA GAS TRAN
-OHIO PURE OIL CORP			RECEIVED: 04/19/82	JA: OH				
8228000		3412122577	107-OV	JA: OH	STEVE ZELENAK #1	ELK	30.0	
-OPEX INC			RECEIVED: 04/19/82	JA: OH				
8228002A		3412725513	103	107-TF	KISSICK #2	FULTONHAM	6.6	

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	VOLUME	PAGE	004	PROD	PURCHASER
8228002B		3412725513	D	107-TF		KISSICK #2					
8228001		3400922276				TRI-COUNTY #12				6.6	
-ORION ENERGY CORP					RECEIVED: 04/19/82	JA: OH				1.0	COLUMBIA GAS TRAN
8228003		3411522515		107-DV		A DAVIS #3				12.0	
-OXFORD OIL CO					RECEIVED: 04/19/82	JA: OH				10.0	
8228004		3411122760		107-DV		EDNA ROBINSON #1				11.0	
8228005		3411925659		103	107-TF	MARY PARKINSON #1					
-PAGE P BLAKEMORE					RECEIVED: 04/19/82	JA: OH					
8227916		3416724689		107-DV		ALLOWAY HEIRS #1				0.4	COLUMBIA GAS TRAN
8227917		3416724694		107-DV		CISLER #1				0.6	
8227919		3416725573		107-DV		CRAWFORD #1				1.1	
8227920		3416725766		107-DV		DANA #1				3.6	
8227915		3416724365	D	107-DV		PUGH #1				2.1	COLUMBIA GAS TRAN
8227918		3416724858		107-DV		SCHWARTZ #1				0.4	
-PETRO EVALUATION SERVICES INC					RECEIVED: 04/19/82	JA: OH					
8228023A		3407523385		103		STITZLEIN #1				10.0	COLUMBIA GAS TRAN
8228024A		3407523586		103		STITZLEIN #2				10.0	COLUMBIA GAS TRAN
8228024B		3407523586	D	107-TF		STITZLEIN #2				10.0	COLUMBIA GAS TRAN
8228023B		3407523385	D	107-TF		STITZLEIN #1				10.0	COLUMBIA GAS TRAN
-PIONEER OIL COMPANY INC					RECEIVED: 04/19/82	JA: OH					
8228025		3408924314		103		M MCCOY #3				20.0	NEWZANE GAS CO
-POI ENERGY INC					RECEIVED: 04/19/82	JA: OH					
8228009		3400721772		103	107-TF	BOGGS #1				16.0	
8228016		3413325470		103	107-TF	DEFER #1				27.0	
8228017		3413322549		103	107-TF	DEFER #3				20.0	
8228018		3413322581		103	107-TF	DILLEY ET AL #1				17.0	
8228019		3413322582		103	107-TF	DILLEY ET AL #2				19.0	
8228006		3400720519		103	107-TF	HAYES #1				15.0	
8228010		3400721848		103	107-TF	HRABAL #4				38.0	
8228008		3400721585		103	107-TF	KENNEDY #1				4.0	
8228021		3415521042		107-RT		MC GARRY #1				8.0	COLUMBIA GAS TRAN
8228022		3415521794		103	107-TF	RESTEMEIRE #1				25.0	
8228020		3413322593		103	107-TF	S & H INVESTMENTS #2				12.0	
8228012A		3407523124		103		VOGEL #1				16.0	
8228012B		3407523124	D	107-TF		VOGEL #1				10.0	COLUMBIA GAS TRAN
8228007		3400725670		103	107-RT	W C SMITH #1				15.0	
8228014A		3407523346		103		WATTS #6				6.0	COLUMBIA GAS TRAN
8228014B		3407523346	D	107-TF		WATTS #6				6.0	COLUMBIA GAS TRAN
8228015A		3407523347		103		WATTS #7				9.0	COLUMBIA GAS TRAN
8228015B		3407523347	D	107-TF		WATTS #7				9.0	COLUMBIA GAS TRAN
8228013A		3407523308		103		WATTS THOMPSON #1				35.0	COLUMBIA GAS TRAN
8228013B		3407523308	D	107-TF		WATTS THOMPSON #1				35.0	COLUMBIA GAS TRAN
8228011		3405520335		103	107-TF	YMCA #4				45.0	
-POWER RESOURCES INC					RECEIVED: 04/19/82	JA: OH					
8228026		3401921553	D	107-TF		CONDOTTON LAND #7				0.0	M B OPERATING CO
8228029		3415521142		107-TF		KONDOLEON-BENNETT #1				0.0	EAST OHIO GAS CO
8228028		3415521132		107-TF		MCCARTNEY #1				0.0	COLUMBIA GAS TRAN
8228031		3415522048		107-TF		MCCARTNEY #2				0.0	COLUMBIA GAS TRAN
8228030		3415521144		107-TF		MCINTOSH #2				0.0	EAST OHIO GAS CO
8228027		3401921554	D	107-TF		POWER-PUSKARICH #1				0.0	M B OPERATING CO
-PYRAMID OIL & GAS CO					RECEIVED: 04/19/82	JA: OH					
8228038		3415521336		107-TF		MATEI UNIT #2				10.0	COLUMBIA GAS TRAN
-PYRAMID OIL & GAS COMPANY					RECEIVED: 04/19/82	JA: OH					

FIELD NAME

FULTONHAM

STEWART

WINDSOR

STAFFORD

BLUE ROCK

SHEETS RUN

GRANDVIEW

GRANDVIEW

GRANDVIEW

GRANDVIEW

LIBERTY

RICHLAND

RICHLAND

RICHLAND

RICHLAND

HOPEWELL

ANDOVER

STREETSBORO

STREETSBORO

STREETSBORO

STREETSBORO

RICHMOND

ANDOVER

WINDSOR

BRACEVILLE

MECCA

STREETSBORO

RICHLAND

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228032		3410322179	107-TF		CLEVELAND #1	LAFAYETTE	15.0	COLUMBIA GAS TRAN
8228033		3415521091	107-TF		CRAFT UNIT #1	SOUTHINGTON	10.0	COLUMBIA GAS TRAN
8228034		3415521092	107-TF		MATEI UNIT #1	SOUTHINGTON	10.0	COLUMBIA GAS TRAN
8228037		3415521329	107-TF		STASZKO #1	SOUTHINGTON	12.0	COLUMBIA GAS TRAN
8228035		3415521226	107-TF		STUCZYNSKI #1	SOUTHINGTON	12.0	COLUMBIA GAS TRAN
8228036		3415521304	107-TF		TEMPLETON #1	SOUTHINGTON	12.0	COLUMBIA GAS TRAN
-QUAKER STATE OIL REFINING CORP			RECEIVED:	04/19/82	JA: OH	NEW STRATTSVILLE	7.3	COLUMBIA GAS TRAN
8228039		3407322527	103	107-TF	SUNDAY CREEK COAL CO #20			
-REPUBLIC MINERAL CORP			RECEIVED:	04/19/82	JA: OH	SIMMONS	5035.0	COLUMBIA GAS OF O
8228046		3416726857	107-DV		SCHWENDEMAN #3			
-RINCO OPERATING INC			RECEIVED:	04/19/82	JA: OH	CHESTER	12.0	COLUMBIA GAS TRAN
8228041		3416922412	103	107-TF	KOPPEL #1	CHESTER	12.0	COLUMBIA GAS TRAN
8228042		3416922641	103	107-TF	KOPPEL #2	CHESTER	12.0	COLUMBIA GAS TRAN
8228043		3416923128	103	107-TF	PETERSON #2	WEST SALEM	12.0	COLUMBIA GAS TRAN
8228044		3416923129	103	107-TF	PETERSON #3	WEST SALEM	12.0	COLUMBIA GAS TRAN
8228045		3416923357	103	107-TF	SHEAFFER #1	MOHICAN	12.0	COLUMBIA GAS TRAN
-ROBERT D CHARLEBOIS			RECEIVED:	04/19/82	JA: OH	LODI	1.0	COLUMBIA GAS TRAN
8227926		3410322867	103	107-TF	FENSTENMAKER - #1			
-ROBERT L CRAIG SR			RECEIVED:	04/19/82	JA: OH	CONNEAUT	72.0	EAST OHIO GAS CO
8227940		3400721972	103	107-TF	JACKSON UNIT #1			
-SHADCO INC			RECEIVED:	04/19/82	JA: OH	GRANGER	20.0	
8228046		3410322790	103	107-TF	SHADE #2			
-SIGLER PETROLEUM CORP			RECEIVED:	04/19/82	JA: OH	UNION	10.0	COLUMBIA GAS TRAN
8228049		3411924899	107-TF		GRAHAM & TAYLOR #1	UNION	10.0	COLUMBIA GAS TRAN
8228048		3411924898	107-TF		GRAHAM & TAYLOR #2	UNION	10.0	COLUMBIA GAS TRAN
8228047		3411924897	107-TF		GRAHAM & TAYLOR #3	UNION	10.0	COLUMBIA GAS TRAN
-SKY PETROLEUM CORP			RECEIVED:	04/19/82	JA: OH	CLARK	8.0	COLUMBIA GAS TRAN
8228051		3403123823	107-TF		MURRAY #1	MECHANIC	6.0	COLUMBIA GAS TRAN
8228050		3403122453	107-TF		YODER #1	BENTON	25.0	
-STRATA PETROLEUM CO			RECEIVED:	04/19/82	JA: OH	GRAYSVILLE	25.0	
8228053		3411122729	107-DV		A B VESTER #1			
8228052		3411122639	107-DV		A M BROWN #1			
-SUPERIOR PETROLEUM INC			RECEIVED:	04/19/82	JA: OH	SOMERSET	25.0	TEXAS EASTERN TRA
8228054		3401320381	D 107-DV		JEFFERTIES #2	MALAGA	25.0	TEXAS EASTERN TRA
8228055		3411122059	D 107-DV		WARD #1			
-TEMPLE OIL & GAS CO			RECEIVED:	04/19/82	JA: OH	PHILO	10.0	
8228056		3411522626	103		CRUDE OIL CO-E DALZELL #1	ELK	0.0	COLUMBIA GAS TRAN
-TIGER OIL INC			RECEIVED:	04/19/82	JA: OH	BROOKFIELD	20.0	COLUMBIA GAS TRAN
8228057		3412122448	107-DV		EMILENE SCHRAMM #3	ORANGEVILLE	20.0	COLUMBIA GAS TRAN
-TITAN ENERGY CORP			RECEIVED:	04/19/82	JA: OH	GUERNSEY	0.0	TENNESSEE GAS PIP
8228059		3415521922	103	107-TF	BROOKFIELD CONSERVATION CLUB #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228058		3415521675	103	107-TF	MABEL MOYER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
-TOWNER PETROLEUM CO			RECEIVED:	04/19/82	JA: OH	GUERNSEY	0.0	TENNESSEE GAS PIP
8228075		3405923235	103	107-TF	BSA/BURNS #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228077		3405923254	103	107-TF	C PULLEY/E SHELLENBERGER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228074		3405923218	103	107-TF	C PULLEY/W BALES #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228061		3405923037	103	107-TF	D MINER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228060		3405922590	103	107-TF	D MULLINEX #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228072		3405923200	103	107-TF	E TOTH #4	GUERNSEY	0.0	TENNESSEE GAS PIP
8228064		3405923079	103	107-TF	EMERSON MALONE #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228067		3405923133	103	107-TF	EMERSON W MALONE #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228068		3405923134	103	107-TF	FRED & EVELYN SHEPARD #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228070		3405923178	103	107-TF	H CORBETT #2	GUERNSEY	0.0	TENNESSEE GAS PIP

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JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8228062		3405923052	103	107-TF	HOUSE #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228063		3405923063	103	107-TF	HOWELL #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228066		3405923098	103	107-TF	J CRISLIP #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228078		3405923255	103	107-TF	MARKEE/VARD #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228073		3405923208	103	107-TF	R BOND #4	GUERNSEY	0.0	TENNESSEE GAS PIP
8228065		3405923089	103	107-TF	R BOND/F SHEPARD #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228071		3405923179	103	107-TF	R KEIFFER #2	GUERNSEY	0.0	TENNESSEE GAS PIP
8228076		3405923253	103	107-TF	R SUNTHIMER #1	GUERNSEY	0.0	TENNESSEE GAS PIP
8228069		3405923169	103	107-TF	V BALES #1	GUERNSEY	0.0	TENNESSEE GAS PIP
-Viking Resources Corp								
8228090A		3415123661	103	RECEIVED: 04/19/82	JA: OH	OSNABURG	30.0	
8228098		3415123661	103	107-TF	A & A ACKERMAN #2 (ADLER UNIT #2)	OSNABURG	30.0	
8228089		3415123660	103	107-TF	A & A ACKERMAN #2 (ADLER UNIT #2)	OSNABURG	30.0	
8228088		3413321197	103	107-TF	D ADLER ET AL #1 (ADLER UNIT #1)	ATWATER	7.0	AMERICAN ENERGY S
8228083		3413320987	103		GRIFFIN UNIT #1	ATWATER	10.0	AMERICAN ENERGY S
8228085		3413320998	103		P & W KARAS #1	ATWATER	4.0	AMERICAN ENERGY S
8228084		3413320997	103		P & W KARAS #10	ATWATER	4.0	AMERICAN ENERGY S
8228079		3413320952	103		P & W KARAS #12	ATWATER	10.0	AMERICAN ENERGY S
8228080		3413320973	103		P & W KARAS #14	ATWATER	10.0	AMERICAN ENERGY S
8228081		3413320974	103		P & W KARAS #2	ATWATER	10.0	AMERICAN ENERGY S
8228082		3413320986	103		P & W KARAS #5	ATWATER	4.0	AMERICAN ENERGY S
8228086		3413320999	103		P & W KARAS #9	ATWATER	5.0	AMERICAN ENERGY S
8228087		3413321196	103	RECEIVED: 04/19/82	JA: OH	ATWATER	5.0	AMERICAN ENERGY S
8228094		3411122364	107-DV		C CLINE #1	WASHINGTON	5.0	COLUMBIA GAS TRAN
8228095		3411122608	107-DV		C PIATT #1	GRAYSVILLE	8.0	COLUMBIA GAS TRAN
8228093		3411122085	107-DV		M MELLOTT #1	WASHINGTON	5.0	COLUMBIA GAS TRAN
8228096		3411522513	103	RECEIVED: 04/19/82	JA: OH	BRISTOL	0.0	COLUMBIA GAS TRAN
-WORTHINGTON OIL COMPANY INC								

BILLING CODE 5717-01-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF). An (*) before the Control (JD) number denotes additional purchasers listed at the end of the notice.

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 273.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission on or before May 27, 1982.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
102-2: New well (2.5 mile rule)
102-3: New well (1,000 ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
107-GB: Geopressed brine
107-CS: Coal seams
107-DV: Devonian shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

Section 108: Stripper well

108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12828 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. G-7156-001, et al.]

Natural Gas Companies; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates¹

May 6, 1982.

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 May 24, 1982, 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

¹This notice does not provide for consolidation for hearing of the several matters covered herein.

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.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft. ³	Pressure base
G-7156-001, G-13445-000, D, Apr. 8, 1982.	Warren Petroleum Company, A Division of Gulf Oil Corporation, Post Office Box 2100, Houston, Texas 77001.	El Paso Natural Gas Company, Waddell Gas Processing Plant, Crane County, Texas.	¹	
G-9765-001, D, Apr. 19, 1982.....	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Natural Gas Pipeline Company of America, Camrick Field, Texas County, Oklahoma.	²	
CI161-1032-000, D Apr. 26, 1982..	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2819, Dallas, Texas 75221.	Michigan Wisconsin Pipe Line Company; Laverne Area, Woodward County, Oklahoma.	³	
CI82-246-000 (CI67-654), B, Apr. 23, 1982.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza; Suite 2700, Houston, Texas 77046.	Trunkline Gas Company, Lakemire Field, Cameron Parish, Louisiana.	⁴	
CI78-66-002, C, Apr. 19, 1982.....	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Natural Gas Pipeline Company of America, High Island Blocks A-337, A-342, and A-343, Offshore Texas.	⁵	14.73
CI78-67-002, C, Apr. 19, 1982.....	do.....	Columbia Gas Transmission Corporation, High Island Blocks A-337, A-342, and A-343, Offshore Texas.	⁶	14.73
CI78-68-002, C, Apr. 19, 1982.....	do.....	Trunkline Gas Company, High Island Blocks A-337, A-342, and A-343, Offshore Texas.	⁶	14.73
CI78-1129-001, C, Apr. 19, 1982..	Mitchell Energy Corporation, P.O. Box 4000, The Woodlands, Texas 77380.	Northwest Pipeline Corporation, Basin Dakota, Rio Arriba County, New Mexico.	⁸	14.73
CI80-499-001, Apr. 21, 1982.....	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	El Paso Natural Gas Company, Matagorda Island Area Field, Offshore Texas.		14.73
CI81-47-001, Mar. 29, 1982.....	Amoco Production Company, P.O. Box 59879, New Orleans, Louisiana 70150.	Trunkline Gas Company and Florida Gas Transmission Company, Section 26, T8S-R7W, Calcasieu Parish, Louisiana.		15.025
CI82-231-000, A, Apr. 16, 1982.....	Pennzoil Oil & Gas Inc., P.O. Box 2967, Houston, Texas 77001.	United Gas Pipe Line Company, High Island Block A-499, South Addition, Offshore Texas.	⁹	14.73
CI82-232-000, A, Apr. 19, 1982.....	Champlin Petroleum Company, Two Allen Center, Suite 1900, 1200 Smith Street, Houston, Texas 77002.	Arkansas Louisiana Gas Company, North Drummond Area, Garfield & Major Counties, Oklahoma.	¹⁰	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft. ³	Pressure base
C82-233-000, A, Apr. 19, 1982	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	United Gas Pipe Line Company, High Island Blocks A-351 and A-368 Field, Offshore Texas.	*	14.73
C82-234-000, A, Apr. 19, 1982	Amoco Production Company, P.O. Box 59879, New Orleans, Louisiana 70150.	Sea Robin Pipeline Company, East Cameron 231 Field (Blocks 232 and 239), Offshore Louisiana.	11	15.025
G-13570-000, D, Apr. 19, 1982	Terra Resources Inc., P.O. Box 2329, Tulsa, Oklahoma 74101.	Northern Natural Gas Co., Hugoton Field, Finney County, Kansas.	12	
C82-236-000, A, Apr. 19, 1982	Natresco Incorporated, P.O. Box 1521 Houston, Texas 77001.	United Gas Pipe Line Company, High Island Blocks A-351 and A-368 Field, Offshore Texas.	9	14.73
C82-237-000, A, Apr. 21, 1982	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	Michigan Wisconsin Pipe Line Company, South Marsh Island Block 136 ("B" Platform), Offshore Louisiana.	13	15.025
C82-238-000 (G171-659), B, Apr. 22, 1982	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, Post Office Box 2619, Dallas, Texas 75221.	Northern Natural Gas Company, Tuttle Field, Comanche County, Kansas.	14	
C82-239-000, A, Apr. 23, 1982	ANR Production Company, 5075 Westheimer, Suite 1100, Galleria Towers West, Houston, Texas 77056.	Transcontinental Gas Pipe Line Corporation, Blocks 501 and 504, Brazos Area, Offshore Texas, Federal Domain.	15	14.73

* The last well on Gulf Oil Corporation's E. B. Jones Lease has been plugged and abandoned and the lease expired by its own terms in July 1987.

¹ Acreage in Section 2, T-1-N, R-19-ECM, Texas County, Oklahoma has been released and the Campbell-Sellers No. 1 well has been plugged and abandoned.

² ARCO no longer holds an interest in the properties which were released to landowner on August 20, 1982.

³ The last well was plugged and abandoned in August, 1981, and the lease surrendered on August 27, 1981.

⁴ Applicant agrees to accept a permanent Certificate of Public Convenience and Necessity covering the subject sale conditioned in accordance with the Natural Gas Policy Act of 1978 and the Commission's Regulations under Said Act.

⁵ Applicant is filing under Gas Purchase Contract dated July 19, 1978, amended by amendment dated December 17, 1980, requesting to increase the depth limitations.

⁶ Applicant is filing under Gas Sales Contract dated July 11, 1980, amended by amendatory agreement dated March 24, 1982.

⁷ Applicant requests that the present certificate in this docket be further amended now to provide authority to operate compression for delivery of gas to Florida Power and Light Company if and when the Commission should act to remove restrictions on transportation of OCS gas to Florida Power and Light Company from the certificates currently held by Trunkline in Docket Nos. CP79-504 and CP77-597.

⁸ Applicant is willing to accept a certificate of public convenience and necessity conditioned in price to the applicable ceiling rates as established by the Natural Gas Policy Act of 1978.

⁹ Applicant is filing under Gas Purchase Contract dated July 2, 1962, for the continuation of service previously authorized under Harper Oil Company (Operator), et al., FERC GRS No. 32, Docket No. C63-1139, at one time certified as a Small Producer.

¹⁰ Applicant is filing under Gas Purchase Contract dated February 10, 1982.

¹¹ Terra Resources, Inc. assigned its interest in two leases comprising the Gingrich Gas Unit to John B. Hawley, Jr. Trust #1; Conveyance and Assignment effective March 1, 1973.

¹² Applicant is filing under Gas Purchase Contract dated March 19, 1982.

¹³ ARCO assigned all of its interest in this property to Earl M. Knighton effective July 1, 1972.

¹⁴ Applicant is filing under Gas Sales Contract dated May 11, 1981.

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. 82-12818 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-481-000]

Arizona Public Service Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that Arizona public Service Company (Arizona) on April 29, 1982 tendered for filing proposed changes in its FERC Electric Service Rate Schedules:

- 12—Electrical District No. 3
- 13—Electrical District No. 7
- 14—Maricopa County Municipal Water Conservation District No. 1
- 15—Roosevelt Irrigation District
- 16—Buckeye Water Conservation & Drainage District
- 35—Electrical District No. 6
- 50—Citizens Utilities Company
- 52—Papago Tribal Utility Authority
- 57—Arizona Electric Power Cooperative, Inc.
- 58—Wellton-Mohawk Irrigation & Drainage District
- 59—Arizona Power Authority
- 65—Colorado River Indian Irrigation Project
- 66—San Carlos Indian Irrigation Project
- 68—Electrical District No. 1
- 74—Town of Wickenburg
- 83—Plains Electric Generation and Transmission Cooperative, Inc.
- 84—Washington Water Power Company

The proposed changes would increase revenues from jurisdictional sales and

service by \$25,200,617 based on the estimated 12-month test period ending March 31, 1983.

Arizona states that the proposed changes are necessary to offset the rapidly escalating costs involved in rendering service under these schedules, and to provide a reasonable return.

Copies of the filing were served upon resale customers affected by the filing and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8, and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. 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 Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12804 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER81-577-005]

Arkansas Power & Light Co.; Order Denying Motion for Acceptance of Late-Filed Application for Rehearing

Issued: May 5, 1982

On April 5, 1982, the Cities of Campbell and Thayer, Missouri (Missouri Cities) filed a motion requesting the Commission to accept a late-filed petition for rehearing of the Commission's order in this docket issued on March 3, 1982, 18 FERC ¶ 61,210. That order, among other things, denied the Missouri Cities' motion to reject Arkansas Power & Light Company's (AP&L) rate filing on *Mobile-Sierra* grounds.¹ For the reasons stated below, the Commission will deny Missouri Cities' motion and dismiss its application for rehearing.

Pursuant to section 313 (a) of the Federal Power Act [16 U.S.C. 825(a)], the Missouri Cities had thirty days after the issuance to the Commission's order of March 3, 1982 (*i.e.*, until April 2, 1982) in which to file an application for rehearing. Missouri Cities state that due to the breakdown of a word processor at 4:15 p.m. on April 2, 1982, they were unable to tender their application for rehearing until after the close of business (5:00 p.m.)² on April 2, 1982.

¹ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

² 18 CFR 375.101(c).

The application was not accepted inasmuch as it was untimely tendered on April 2, 1982, but is was filed with the Commission on the next business day, April 5, 1982.

The Missouri Cities request that the Commission (1) deem its filing accepted as of April 2, 1982, or in the alternative, (2) grant a one-day extension of time for the filing of its application for rehearing, or in the alternative, (3) deem its filing a motion for reconsideration of the Commission's order of March 3, 1982, and (4) grant a stay of the Commission's order of March 3, 1982, pending a hearing on the issue of the parties' intent with respect to the *Mobile-Sierra* contract claim.

On April 16, 1982, AP&L submitted an answer requesting denial of Missouri Cities' motion. In its answer, AP&L states (1) that the present circumstances do not warrant an exception to the normal 5:00 p.m. close of business rule, (2) that the Commission is without authority to waive the thirty day filing requirement for applications for rehearing under section 313 of the Federal Power Act, (3) that Missouri Cities' motion was not verified or served in accordance with Commission regulations, and, (4) that Missouri Cities present no grounds warranting reconsideration of the Commission's prior order.

Discussion

The time period within which a party may file an application for rehearing of a Commission order is statutorily established at thirty days by section 313(a) of the Federal Power Act (16 U.S.C. § 825(a)). As we have previously stated, the Commission has neither the authority to waive the statutory requirement nor any inclination to employ a legal artifice to circumvent it. (*Southern California Edison Company*, Docket No. ER76-205, 18 FERC ¶ 61,024, issued January 13, 1982). The Missouri Cities should have been well aware of the statutory deadline for filing their application for rehearing, which we note should not have required extensive time for preparation.³ By waiting until 4:15 p.m. on the statutory due date to complete their application for rehearing, the Missouri Cities assumed the risk that unanticipated circumstances might impair their ability to make a timely filing.⁴

³ The Cities' pleading consists of five pages explaining their delay and requesting procedural relief, and only two pages addressing their substantive contentions.

⁴ We note that in their motion, the Missouri Cities state that "(d)espite the twenty minute delay in reconstruction of the pages, Missouri Cities' filing left the attorney's office in time to meet the

Further, Missouri Cities have not presented any new facts, circumstances, or arguments which would warrant reconsideration of our order of March 3, 1982. For the foregoing reasons, Missouri Cities' motion will be denied and their application for rehearing dismissed as untimely.

The Commission orders:

(A) Missouri Cities' motion for acceptance of their late-filed application for rehearing is hereby denied, and their application is dismissed as untimely filed.

(B) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12829 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-120-000]

Cleek Dairy Farm; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 7, 1982.

On April 23, 1982, Cleek Dairy Farm, Route #1, Kingsport, Tennessee 37660, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The small power production facility will be located in Kingsport, Sullivan County, Tennessee. The primary energy source of the facility will be biomass in the form of biogas produced from cow manure in an on-site biodigester plant. The electric power production capacity of the facility will be 25 kilowatts. There are no other small power production facilities using biogas and owned by the Applicant located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such

Commission's 5:00 p.m. deadline." Thus, it is not clear whether the malfunction of the word processor or some other unexplained event was the direct cause of petitioners failure to make a timely filing.

petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12805 Filed 5-12-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-482-000]

Commonwealth Edison Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that Commonwealth Edison Company (CE) on April 29, 1982, tendered for filing a Letter Agreement dated January 29, 1982 which cancels Appendix "C" to the Interconnection Agreement dated as of November 1, 1964 between CE and Central Illinois Public Service Company.

Appendix "C" provides for a normally open 34 Kv point of interconnection between the Companies and the interconnection is no longer required by either party.

Copies of the filing were sent to Central Illinois Public Service Company and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. 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. 82-12806 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-480-000]

Connecticut Light & Power Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that on April 29, 1982, the Connecticut Light and Power Company (CP&L) tendered for filing as an initial rate schedule of an exchange agreement (the Agreement) between CL&P and the Hartford Electric Light Company (HELCO) (the NU Companies), and Burlington Electric Department (Burlington). The Agreement, dated as of November 1, 1980, provides for the NU Companies to exchange capacity from Middletown Unit No. 4 and/or Montville Unit No. 6, both oil-fired, intermediate-type electric generating units, for gas turbine capacity from the Burlington GT-1 Unit, a gas turbine type electric generating unit.

The Agreement provides that the parties will determine daily and/or weekly during the term of the Agreement whether it is economically advantageous to the parties that an exchange shall take place.

Burlington will pay an hourly capacity charge to the NU Companies in an amount equal to the kilowatts of capacity exchanged times \$0.00274. Burlington will purchase energy from Middletown Unit No. 4 and/or Montville Unit No. 6 at the average cost of providing such energy. Burlington will pay a station service energy charge to the NU Companies for Middletown Unit No. 4 and/or Montville Unit No. 6 at the average cost of providing such energy from the Northeast Utilities System when such units are not operating during an exchange. The NU Companies will purchase energy from the GT-1 Unit at the average cost of providing such energy.

CL&P requests that the Commission waive its notice requirements to allow the Agreement to become effective on November 24, 1980.

According to CL&P copies of this filing has been sent to the NU Companies and Burlington.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 24, 1982. 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. 82-12807 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES82-53-000]

El Paso Electric Co.; Application

May 3, 1982.

Take notice that on April 29, 1982, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue Notes and Commercial Paper not to exceed in the aggregate \$200,000,000 face value at any one time outstanding.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before May 19, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-12821 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI61-1319-000]

El Paso Exploration Co.; Application

May 3, 1982.

Take notice that on March 28, 1982, El Paso Exploration Company, ("Applicant") of Post Office Box 1492, El Paso, Texas 79978, filed an application for certificates of public convenience and necessity in Docket Nos. CI61-1319-000, *et al* authorizing Applicant to continue to render service previously authorized under certificate of public convenience and necessity heretofore issued to Odessa Natural Corporation ("Odessa"). Applicant is also requesting redesignation of Odessa's rate schedules ("Odessa") as the rate schedule of El Paso Exploration Company.

By Articles of Amendment to the Articles of Incorporation of Odessa Natural Corporation, dated December 19, 1980, the name of Odessa was changed to El Paso Exploration Company, effective January 1, 1981.

The properties of Odessa subject to the instant certificates were conveyed to Applicant by instruments of assignments executed on various dates in 1981, all to be effective January 1, 1981.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, petitions to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. 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. 82-12822 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-119-001]

Energenics Systems Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

May 7, 1982

On April 23, 1982, Energenics Systems Inc., 1717 K Street, N.W., Suite 706, Washington, DC 20006, filed with the Federal Energy Regulatory Commission (Commission) an application for

certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The hydroelectric facility will be located in Collbran, Mesa County, Colorado. The electric power production capacity of the facility will be 3,950 kilowatts. There are not other small power production facilities located within one mile of the site which use the same energy source and are owned by the Applicant. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12808 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01

[Docket No. ER32-479-000]

Florida Power & Light Co., Filing

May 6, 1982.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on April 29, 1982, tendered for filing documents entitled Amendment Number Eight and Amendment Number Nine to Agreement to Provide Specified Transmission Service Between FPL and City of Homestead.

FPL states that under Amendment Number Eight FPL will transmit power and energy for the City of Homestead (Homestead) as is required by Homestead in the implementation of its interchange agreement with the City of Tallahassee.

Amendment Number Nine updates the rates for transmission service provided by FPL, bringing them in accord with the increased rates filed by the Commission

on July 1, in Florida Power & Light Company, Docket No. ER81-588.

FPL requests that waiver of Section 35.3 of the Commission's Regulations be granted and that the proposed Amendments be made effective immediately.

FPL states that copies of the filing were served on the City of Homestead.

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 May 24, 1982. 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. 82-12809 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF82-95-000]

Geo Energy; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 6, 1982.

On March 22, 1982, Geo Energy, Inc., 530 Oakgrove Avenue, Suite 201, Menlo Park, California 94025 filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping-cycle cogeneration facility will be located in Martell, California. The primary energy source of the facility will be natural gas. The electric power production capacity of the facility will be 41,055 kilowatts with 16.237 million Btu/hour useful thermal energy output or 54,564 kilowatts with 18.218 million Btu/hour useful thermal energy output. Installation of the facility will begin in June 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C.

20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12810 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RA 82-20-000]

ICG Vista Petroleum, Inc.; Filing of Petition for Review

May 6, 1982.

Take notice that ICG Vista Petroleum, Inc. on April 29, 1982 filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before May 20, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before May 20, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are

available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12811 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-114-000]

**Long Lake Energy Corp., Dolgeville;
Application for Commission
Certification of Qualifying Status of a
Small Power Production Facility**

May 7, 1982.

On April 19, 1982, Long Lake Energy Corporation, 330 Madison Avenue, New York, New York 10017, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The applicant seeks Commission certification of qualifying status for the Dolgeville facility, a 5,000 kilowatt water power project located at the Dolgeville dam on East Canada Creek in the Village of Dolgeville, Herkimer County, New York. The Dolgeville facility will utilize an existing stone masonry dam rehabilitated to meet New York State dam safety standards and with reconstructed headworks and intake passageway, a 710 foot long, 10 foot diameter reinforced fiberglass penstock, a new reinforced concrete powerhouse containing one 2200 mm horizontal S-type Kaplan turbine with electronically governed (by headwater level controller) wicket gates and adjustable blades. Long Lake Energy Corp. owns no other small power production facilities using the same energy source that are located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12812 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF82-115-000]

**Long Lake Energy Corp., Diana;
Application for Commission
Certification of Qualifying Status of a
Small Power Production Facility**

May 7, 1982.

On April 19, 1982, Long Lake Energy Corporation, 330 Madison Avenue, New York, New York 10017, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The applicant seeks Commission certification of qualifying status for the Diana facility, a 2,500 kilowatt waterpower project located at the Harrisville dam on the West Branch of the Oswegatchie River in the Town of Diana, Lewis County, New York. The Diana facility will utilize an existing concrete gravity dam rehabilitated to meet New York State dam safety standards and with a repaired headworks and intake passageway, a 122 foot long, 10 foot diameter reinforced fiberglass penstock, and a new reinforced concrete powerhouse containing one 1900mm horizontal S-type Kaplan turbine. Long Lake Energy Corp. owns no other small power production facilities using the same energy source that are located within one mile of the facility. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12813 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI77-145-002 et al.]

**McMoRan-Freeport Oil Co. et al.;
Merger and Name Change**

May 3, 1982.

Take notice that on June 2, 1981, McMoRan-Freeport Oil Company of Post Office Box 6800, Metairie, Louisiana 70009, filed a notice of merger and name change. Applicant is requesting redesignation of Freeport Oil Company's rate schedules on file with the Commission as the rate schedules of McMoRan-Freeport Oil Company as shown on Exhibit "A").

Effective April 21, 1981, Freeport Oil Company changed its name to McMoRan-Freeport Oil Company. The change was made subsequent to the merger of its parent company with McMoRan on April 8, 1981.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 17, 1982, 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 of its own review of the matter believes that a grant of the certificates of 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.

EXHIBIT A

Gas number schedule No.	Docket No.	Field
1.....	CI77-145-002	Vermilion Block 22.
2.....	CI77-148-002	Vermilion Block 22.
3.....	(¹)	(¹)
4.....	CI79-245-001	East Cameron Block 263.
5.....	CI79-311-001	Vermilion Block 25.
6.....	CI80-235-001	Vermilion Block 310.
7.....	CI81-86-001	West Cameron Block 65.
8.....	CI81-86-001	West Cameron Block 65.

¹ No record of this rate schedule.

Field for which certificates and rate schedule have been requested but not yet assigned include:

High Island Block A-492
West Delta Block 34

[FR Doc. 82-12823 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-34-000]

Michigan Gas Storage Co.; Change in Tariff

May 5, 1982.

Take notice that on April 26, 1982, Michigan Gas Storage Company (Storage Company) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventh Revised Sheet No. 4
Seventh Revised Sheet No. 5
First Revised Sheet No. 24E

An effective date of April 27, 1982, is proposed.

Storage Company states that this submittal implements a settlement agreement also submitted in the same filing, under which Storage Company and the Commission Staff have resolved all issues concerning the changes reflected in the tariff sheets submitted.

Storage Company states that copies of its filings have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to comment or to protest said filing should file a comment, petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8, 1.10 and 1.18 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10, 1.18). All such comments, petitions or protests

should be filed on or before 10 days after issuance of this notice. Any reply comments should be filed on or before 15 days after the issuance of this notice. 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. 82-12814 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-1-002]

Public Service Co. of New Mexico; Order Granting Motion To Collect Proposed Settlement Rates in Part

May 3, 1982.

On March 25, 1982, Public Service Company of New Mexico (PNM) filed a motion requesting permission to collect proposed settlement rates in lieu of the rates originally filed in this docket. PNM requests that it be allowed to collect the settlement rates beginning May 1, 1982, when the filed rates are to become effective, subject to refund. In the event that the Commission later rejects the proposed settlement, PNM also seeks permission to reinstate its originally filed rates and to recover any difference between the settlement rates and the filed rates by means of a surcharge. For the reasons stated below, we shall grant the motion, except insofar as it would reserve the right to impose a surcharge.

On October 1, 1981, PNM submitted proposed rates for firm power service to four partial requirements customers¹ and one full requirements customer, the City of Gallup (Gallup). By order issued November 30, 1981, the Commission accepted the rates for filing and suspended them for five months to become effective, subject to refund, on May 1, 1982. On March 25, 1982, PNM filed a proposed settlement agreement which purports to resolve outstanding issues concerning the customer, demand, and energy charges for the four partial requirements customers in this docket. None of the affected customers has filed a response objecting to the motion.

Discussion

The settlement rates agreed to by PNM and its partial requirements

¹ City of Farmington, New Mexico; Department of Energy, Los Alamos; Plains Electric Generation and Transmission Cooperative, Inc.; and Texas-New Mexico Power Company.

customers are approximately \$6.4 million lower than the filed rates. PNM states that it desires to collect the settlement rates in order to give its customers the benefit of the lower rates immediately, while reducing its potential refund liability. As noted, however, PNM also asserts that if the Commission ultimately rejects the settlement, PNM should be permitted to immediately collect the higher filed rates and to recover any difference between the settlement rates and the filed rates in billings after May 1, 1982, through a surcharge.

In light of the facts surrounding PNM's request, we shall authorize the company to collect the lower settlement rates pending disposition of the settlement agreement. However, based on the pleadings before us, we shall deny PNM's request for approval of a surcharge contingency. Although the affected customers have not filed responses in opposition to PNM's motion, the motion itself does not indicate customer concurrence. The Commission has previously permitted such surcharge provisions in conjunction with interim rates only upon express agreement among all effected parties. In all other instances, we have indicated that upon disapproval of a proposed settlement, the originally filed rates could become effective prospectively only. We are not prepared to construe the absence of objection as express consent and, accordingly, the proposed surcharge will not be allowed to operate.

Pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, we find that good cause exists to permit the collection of PNM's proposed interim rates as of May 1, 1982, subject to refund, until such time as we may act on the settlement agreement filed by PNM. In the event that the settlement is not approved, the originally filed rates may become effective prospectively only and subject to refund from the date of a Commission order rejecting the settlement proposal. This order shall be without prejudice to our subsequent determination on the merits of the proposed settlement.

The Commission Orders

(A) The motion filed on March 25, 1982, by PNM for approval to collect interim rates in lieu of the rates originally filed in this docket is hereby granted in part and denied in part.

(B) Good cause having been shown, PNM is hereby authorized, pursuant to §§ 35.1(e), 35.11, and 35.17(b) of the Commission's regulations, to collect, subject to refund, the proposed rates

reflected in the motion and settlement from May 1, 1982, until the Commission acts on the settlement. In the event that the settlement is not approved, the originally filed rates may become effective prospectively only and subject to refund from the date of a Commission order rejecting the settlement proposal.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission,
Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12824 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-445-000]

San Diego Gas & Electric Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that on April 5, 1982, San Diego Gas & electric company (SDG&E) tendered for filing a notice of cancellation that effective the 30th of April 1982, Rate Schedule FERC Electric Tariff original Volume No. 1, effective July 1, 1981, is to be cancelled.

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 May 19, 1982. 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. 82-12815 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF82-116-000]

Scott Paper Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 6, 1982.

On April 16, 1982, Scott Paper Company, Scott Plaza, Philadelphia, Pennsylvania 19113, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying

cogeneration facility pursuant to § 292.207 of the Commission's rules.

The facility will be located at the S.D. Warren pulp and paper mill in Skowhegan, Maine. The facility commenced operation as a cogeneration facility in March, 1977. The primary energy source will be biomass (dry black liquor solids, wood wastes and plant sludge), supplemented by No. 6 fuel oil. The peak power production capacity will be approximately 45.49 megawatts. The annual useful thermal energy output will be in the form of steam at a rate of 200,000 lbs/hr, at 165 psig and 410,000 lbs/hr, at 65 psig. No electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12816 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER82-475-000]

Southern California Edison Co.; Filing

May 6, 1982.

The filing Company submits the following:

Take notice that on April 26, 1982, Southern California Edison Company (SCE) tendered for filing as supplements to the Rate Schedules listed below, letter agreements which have been executed by SCE and each entity listed, providing for the assignment to Edison of the entity's interest and obligations for firm transmission service between Palo Verde Nuclear Generating Station and an entity's Point of Interconnection with Edison.

Entity	FERC No.	Effective date
1. City of Burbank (Burbank).	135	Mar. 25, 1982.
2. City of Glendale (Glendale).	136	Mar. 25, 1982.
3. City of Pasadena (Pasadena).	137	Mar. 25, 1982.
4. Imperial Irrigation District (IID).	138	Jan. 15, 1982.

Copies of this filing were served upon the California cities of Burbank, Glendale, and Pasadena, IID, and the Public Utilities Commission of the State of California.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 19, 1982. 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. 82-12817 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EF81-5121-000]

Western Area Power Administration; Central Valley Project—Pacific Gas & Electric Co.; Contract Order Rejecting Filing and Denying Interventions

Issued: May 4, 1982.

Under Article 32 of Contract No. 14-06-200-2948A (Contract) between the Western Area Power Administration (WAPA) and Pacific Gas and Electric Company (PG&E), the Assistant Secretary for Conservation and Renewable Energy (AS/CE) of the Department of Energy filed a request on June 24, 1981, on behalf of WAPA, for approval of a revised "passthrough" rate methodology. The rates apply to the resale by WAPA's Central Valley Project (CVP) to PG&E of capacity and energy obtained by CVP from the Centralia power plant as well as energy from other Pacific Northwest sources. Article 32 of the contract provides that implementation of revised rates requires the concurrence of both parties. In the absence of mutual agreement, Article 32

contemplates submission of the matter to the Commission for resolution.¹

PG&E did not agree to the proposed rates; thus, the AS/CE approved the new methodology by Rate Order No. WAPA-8 (June 19, 1981), but did not place the revised rates into effect on an interim basis. Instead the AS/CE has requested that this Commission arbitrate the impasse between the parties.² The AS/CE has further requested that the Commission allow the rates to become effective retroactively as of April 1, 1981, subject to refund with interest, pending a final Commission determination as to whether or not the rates are appropriate. By letter agreement dated January 27, 1981, WAPA indicated that the parties have agreed that the rate methodology approved by the Commission may become effective for Centralia power sales from April 1, 1981, through December 31, 1981, the end of WAPA's contract to purchase power from Centralia, and for other Northwest energy sales from April 1, 1981, through March 31, 1986.

Background

The power resources of the CVP consist of hydroelectric plants with an aggregate installed capacity of 1,709 megawatts which are currently supplemented by the import of 400 megawatts of capacity and associated

energy from the Northwest. Most of the power imported from the Northwest is obtained from the Centralia powerplant located 85 miles south of Seattle, Washington. The Centralia facility is a coal-fired thermal generating plant consisting of two units with nameplate ratings of 650 megawatts each. Participants in the thermal project are Pacific Power & Light Company and the Washington Water Power Company. The Bureau of Reclamation, now WAPA, contracted to purchase 426.9 megawatts of firm power from the project for its initial ten years of operation. For this power, WAPA pays a portion of the participants' fixed and operating costs based on the percentage of the project output that it receives. By letter dated September 17, 1971, the Federal Power Commission (FPC) accepted the Centralia sales contract as a rate schedule. WAPA's power is wheeled by the Bonneville Power Administration (BPA) over BPA's transmission facilities to the southern Oregon border where BPA's system interconnects with a CVP feature, the Pacific Northwest-Pacific Southwest Intertie.

Under the terms of the PG&E/WAPA contract, the output from CVP hydroelectric powerplants, plus the 400 megawatts of capacity and associated energy imported from the Northwest, are first used to serve CVP preference customer loads. Capacity and energy in excess of that needed to meet the CVP's obligations to its preference customers are sold to PG&E for credit under a banking arrangement. These amounts can be repurchased as needed in future years to meet the CVP's load requirements. This contract was filed by PG&E and accepted for filing by the FPC.³

Northwest imports began in 1968 with the purchase of power from the Bonneville Power Administration. Regular imports from the Centralia powerplant began in 1972, and were delivered pursuant to the terms of the PG&E/WAPA contract.

In setting its rates initially, CVP did not attempt to distinguish between power received from the Northwest and power generated at its own projects but simply billed PG&E at CVP's general system rates, consisting of a capacity charge of 75 cents per kilowatt-month and energy block charges of 4, 3, and 2 mills per kilowatt-hour.

The first opportunity to review and adjust the Centralia rate was on April 1,

1971.⁴ However, the rate was not adjusted at that time because the Centralia plant was not then in operation and its costs were not known. When the first unit was placed in service in the fall of 1971, the associated costs were greater than those which had originally been estimated. Principally because of the higher cost of Centralia power, the CVP began falling behind in its Federal repayment obligation.

In conjunction with the review of its proposed general rate increase in 1974 and 1975, CVP considered the possibility of adjusting the Centralia rates at the next opportunity, April 1976. This resulted in the existing method for setting Centralia rates which is embodied in a December 14, 1976 Department of Interior document entitled "Final Position on and Adjustment in Rates to the Pacific Gas and Electric Company for Northwest Capacity and Energy," also known as the Frizzell Decision. Under the Frizzell Decision, PG&E is charged the flowthrough or actual cost for energy received from the Northwest, and the flowthrough capacity charge for that portion of the capacity associated with energy at a 60 percent capacity factor. The balance of the Northwest capacity delivered to PG&E is charged at CVP's general rate for firm capacity. This approach resulted in a "split rate" for capacity charges to PG&E. The formula excluded the costs of the Pacific Northwest-Pacific Southwest Intertie from Malin, Oregon, to Tracy, California, which is used to transmit capacity and energy from the Pacific Northwest to the interconnected transmission system of PG&E and CVP in Northwest California. PG&E accepted the rate methodology established in the Frizzell Decision. This methodology was not filed with the FPC, since at that time, the Commission had no authority over CVP rates and the methodology was not contested under the terms of the PG&E/WAPA contract.⁵

In the instant filing, WAPA has proposed a "passthrough" rate methodology intended to recover all costs incurred by WAPA for the Northwest capacity and energy that are sold to PG&E.⁶ The proposed rates for

¹ Article 32 of the Contract provides in part that: *Rates and charges under this contract shall be fair and equitable and shall . . . be jointly reviewed and adjusted as appropriate on April 1, 1971, and every 5 years thereafter . . .* Such review shall take into account substantial savings accruing to either party and applicable costs of construction and production, including changes therein and appropriate service charges, during the preceding 5 years. *If the parties are unable to agree on a change of any rate or charge, the matter shall be submitted to the Federal Power Commission for final decision.* (Emphasis added)

² Pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation, under the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Central Valley Project, were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60638, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications (AS/RA) the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The Secretary delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove the rates developed by the AS/RA. Effective February 24, 1981, the Secretary abolished the Office of AS/RA and transferred DOE's power marketing responsibilities to the Office of the Assistant Secretary for Conservation and Renewable Energy.

³ Docket No. E-7435, Order Accepting Rate Schedule for Filing and Denying Requests for Suspension and Hearing, (November 6, 1968).

⁴ See contract language at footnote 1, *supra*.

⁵ As noted in footnote 2, *supra*, the Commission's "confirmation and approval" authority over rates charged by WAPA was established by DOE Secretarial Delegation Order No. 0204-33, effective January 1, 1979.

⁶ WAPA estimates that, based on a declared project dependable capacity (PDC) of 813 megawatts, the Centralia passthrough rate will increase CVP revenues by \$2,884,000 over the current split-rate method from April 1, 1981, to December 31, 1981, the end of WAPA's contract to purchase from the Centralia powerplant.

Centralia capacity and energy are estimated at \$5.07 per kilowatt-month and 16.758 mills per kilowatt-hour, respectively. These rates are based on estimated costs and contemplate adjustment as necessary to reflect actual costs. The capacity rate includes a charge to PG&E of \$3.35 per kilowatt-year for use of the Pacific Northwest-Pacific Southwest Intertie. This charge is not included in the current rate. The proposed energy rates are also based on actual costs, but do not include a charge for use of the Intertie. Since PG&E does not concur with the proposed methodology, the parties have requested that this Commission resolve the rate methodology under Article 32 of the contract.

Comments

Notice of the filing was published in the Federal Register on July 9, 1981, with comments due on or before July 24, 1981. Timely petitions to intervene were filed by PG&E and jointly by the Northern California Power Agency (NCPA) and the Sacramento Municipal Utility District (SMUD). PG&E also filed a motion to reject the filing. The People of the State of California and the Public Utilities Commission of the State of California filed a timely notice of intervention.

In its motion to reject WAPA's filing, PG&E contends that WAPA has not provided sufficient material for the Commission to determine whether the proposed rates are just and reasonable, whether the proposed rates are cost-based, or how the costs of Centralia power are allocated among WAPA's various customers. PG&E further maintains that WAPA has not justified the intertie charge to PG&E which is included in the proposed rates, and that the filing does not meet the minimum requirements set forth in Part 35 of the Commission's regulations governing the filing of rate schedules. PG&E requests that the filing be rejected or, alternatively, set for hearing.

NCPA and SMUD also request a hearing, contending that the proposed rates are too low. These intervenors claim that the rates established under the Frizzell Decision resulted in a \$70 million loss to CVP prior to April 1, 1981, which will have to be recovered from either PG&E or CVP's preference customers. Thus, it is their position that PG&E should be charged a rate in excess of a cost of service rate. They also assert that the intertie charges should be allocated to non-firm energy rates, that the filing is deficient, that the appropriate level of project dependable capacity should be established at hearing, and that the proposed rates are

arbitrary, capricious, unlawful, and in violation of the contract.

Discussion

As noted, Article 32 of the PG&E/WAPA contract provides that when the parties are unable to agree on a change in rates, the matter will be submitted to the Commission for a final determination. While the contract was accepted by the FPC as a filed PG&E rate schedule, we do not believe that this Commission is obligated to act in the role of an arbitrator in this matter. The Commission has not undertaken an obligation to arbitrate this contract and the mere fact that the parties have so agreed does not bind this Commission. Clearly, we have no obligation to accept the requested role. Further, we note that the role requested of this Commission in this proceeding differs from that exercised strictly in accordance with our confirmation and approval authority; the PG&E/WAPA contract appears to contemplate the situation in which the Commission may set rates at levels other than the filed rates whereas in the confirmation and approval context, the Commission has authority only to approve, reject, or remand rates as filed.⁷ Unlike the FPC, whose authority over PMA rates derived from statute, this Commission's authority stems exclusively from Secretarial Delegation Order No. 0204-33. The delegated role applies to project rates, is narrowly circumscribed, and does not appear to contemplate direct involvement in the PMA ratemaking process. Because WAPA is not a jurisdictional public utility, the Federal Power Act provides no additional authority to review WAPA's rates from services provided from non-project sources. Accordingly, we shall reject the AS/CE's request on behalf of WAPA for the reasons discussed above.

The Commission Orders

(A) The AS/CE's request is hereby denied.

(B) WAPA's submittal in this docket is hereby rejected.

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12825 Filed 5-11-82; 8:45 am]

BILLING CODE 6717-01-M

⁷ E.g., "Order Remanding Rates Without Prejudice," Bonneville Power Administration, 13 FERC ¶ 61,157 Docket No. EF80-2011-000 (November 21, 1980).

[Docket No. EF80-5011-000]

Western Area Power Administration; Order Disapproving Rate Schedules

May 4, 1982.

By letter filed on October 4, 1979, the Assistant Secretary for Resource Applications (AS/RA) of the Department of Energy, on behalf of the Western Area Power Administration (WAPA), submitted a request for final confirmation and approval of new rate schedules CV-F4 and CV-P3 for a four year period ending October 31, 1983.¹ The rate schedules,² applicable to power generated from the Central Valley Project (CVP), are expected to increase revenues from \$35,696,000 to \$79,048,000. The average cost of wholesale firm power would increase from 4.3 mills per kilowatt-hour to 9.76 mills per kilowatt-hour. The rate schedules consist of a single rate structure (\$2.00 per kilowatt-month for capacity, and 5.11 mills per kilowatt-hour for energy) applicable to all customers of CVP.

Notice of the submittal was published in the Federal Register on October 29, 1979, with comments due on or before November 13, 1979. Timely petitions to intervene were filed by Eleven Irrigation Districts (Districts), Northern California Power Agency (NCPA), Sacramento Municipal Utility District (SMUD) and the City of Santa Clara, California (Santa Clara). Untimely petitions to

¹ Pursuant to section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*), the power marketing functions of the Secretary of the Interior for the Bureau of Reclamation, under the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and acts specifically applicable to the Central Valley Project, were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the AS/RA the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The Secretary delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove the rates developed by the AS/RA. Pursuant to the delegation to the AS/RA and the rate adjustment procedures at 43 FR 12076 (March 23, 1978) as amended at 44 FR 7796 (February 7, 1979), the AS/RA placed the proposed rate schedules CV-F4 and CV-P3 into effect on an interim basis. Effective February 24, 1981, the Secretary abolished the Office of AS/RA and transferred DOE's power marketing responsibilities to the Office of the Assistant Secretary for Conservation and Renewable Energy.

² Rate Schedule CV-F4 is available to preference customers with allocations for wholesale firm power service. Rate Schedule CV-P3 applies to commercial irrigation customers for irrigation or drainage pumping use or other related incidental uses. For rate schedule designations, see Attachment A.

intervene were filed by Pacific Gas and Electric Company (PG&E) and the Cities of Palo Alto, Roseville, Redding, Briggs and Gridley, California, and Plumas-Sierra Rural Electric Cooperative (collectively called Cities).³ The petitions generally protested the AS/RA's decision in Rate Order No. WAPA-2, raising numerous issues.⁴

Background

Located in central and southern central California, the CVP consists of seven power plants, two pumping generating stations, and approximately 1300 miles of transmission lines which are interconnected with the PG&E transmission system.⁵ Although approximately \$217 million of the \$270 million existing investment had been repaid as of the date of the filing, an additional \$84 million in investments was projected to be in service during the cost evaluation period⁶ as a result of the New Melones Dam, reservoir, and power plant becoming operational as part of the CVP system. Further,

³ In its petition to intervene and request for hearing, Santa Clara requested, *inter alia*, that the Commission (1) limit the application of the unauthorized overrun provision included within Schedule CV-F4, (2) allocate 117 megawatts of firm power to Santa Clara or, in the alternative, remand this proceeding to WAPA for the initiation of a rulemaking with respect to power allocation. We do not believe that initiation of a rulemaking or hearing is appropriate in this proceeding.

On December 3, 1979, the Cities filed comments in opposition to Santa Clara's pleading. Santa Clara filed a response to the Cities' comments on January 15, 1980. We note that Santa Clara and the Cities, pursuant to a settlement agreement (between Cities, Santa Clara, PG&E and WAPA), have agreed to withdraw their pleadings in this proceeding. (See, *City of Santa Clara v. Charles Duncan, et al.*, Order No. C-75-1574 SC, Order of Dismissal issued October 3, 1980). As of this date, however, no request for withdrawal has been filed with the Commission.

⁴ These issues include (1) the reasonableness of PG&E's wheeling rate, (2) WAPA's wheeling rate to its direct service customers, (3) the single rather than dual demand and energy rate design, (4) PG&E's banking arrangement (see footnote 9, *infra*), (5) the assumed levels of project dependable capacity, (6) the split-rate charge to PG&E under the Frizzel Decision for power transmitted over the Pacific Northwest-Southwest Intertie, and (7) SMUD's claim that contract provisions prevent the filed rate from being placed into effect prior to May 25, 1983. In addition, the petitioners have challenged the failure of the Assistant Secretary to approve a special irrigation rate, an allegedly impermissible congressional interference with the Assistant Secretary's decision to approve the single rate design, the extension of interim rates, and the lack of environmental and price stability compliance.

⁵ The seven power plants are Judge F. Carr, Folsom, Keswick, Nimbus, Shasta, Spring Creek, and Trinity. The two pumping generating plants are O'Neill and San Luis.

⁶ Cost evaluation period is a period of time during which estimates of future costs and revenues may be modified to reflect changing conditions in the power repayment study and is normally 5 years as provided for in the regulations adopted by the AS/RA (Order RA 6120.2 dated September 20, 1979).

additional revenues were expected to be needed to repay (1) \$352,690,000 in aid to irrigation and waterfowl conservation, and (2) \$48,202,000 for payment of deferred costs.⁷

The power from the CVP system is dedicated first to providing energy for project irrigation pumping, with the remaining capability used to provide commercial power to preference customers in northern California.⁸ Because CVP's system facilities are designed to provide peaking power and to meet the seasonal demands for pumping irrigation water use, the capacity of the CVP system (approximately 460 megawatts) is insufficient to meet its commercial load. In order to supplement its capacity, CVP in 1967 entered into a contract with PG&E for the purchase, sale, and interchange of power and energy.⁹

History of Rate Relief

On September 12, 1977, the Department of the Interior in accordance with its then existing procedures announced a tentative rate change for power marketed from CVP. Following the establishment of DOE, new procedures were proposed to permit the setting of interim rates while consideration continued on the proposed tentative rate change. On January 4, 1978, in anticipation of the amended procedures,¹⁰ the AS/RA proposed an interim two-step rate increase for CVP. The first step (Phase I) of the increase consisted of a \$2.00 per kilowatt-month demand charge and a 4.2 mills per kilowatt-hour energy charge which would become effective sixty days after approval for the period ending March 31, 1979. The second step

⁷ The deferred excess capacity costs of the Folsom-South and the Tehama-Colusa Canal (amounting to \$2,425,000 and \$45,777,000, respectively) reflect the investment costs associated with canal and conveyance system expansion.

⁸ CVP's preference customers are as follows: (1) military and other Federal installations, irrigation and reclamation districts, (2) cooperatives and utility districts, (3) municipalities, and (4) educational and penal institutions of the State of California.

⁹ Contract No. 14-06-200-2948A. Essentially, the contract provides for the firming up of CVP's generation to meet the preference customers' load of 1,050 megawatts by means of purchases from PG&E and for the sale to PG&E of excess energy and capacity generated by the CVP system, along with any excess power imported from the Northwest over the Pacific Northwest-Southwest Intertie. CVP retains the right to purchase an equivalent amount of capacity and energy from PG&E at times and in amounts required when CVP power supply is insufficient to meet its customer load.

¹⁰ On March 20, 1978 (43 FR 12076, issued on March 23, 1978), procedures were amended and issued to permit the Administrator of the Economic Regulatory Administration to establish interim rates.

(Phase II), which was scheduled to become effective after March 31, 1979, contained a \$2.00 per kilowatt-month demand charge and a dual energy charge (5.75 mills per kilowatt-hour for non-load growth customers and 9.75 mills per kilowatt-hour for load growth customers).

On March 20, 1978, ERA approved only the Phase I interim rates.¹¹ The Phase I interim rates were later extended by order of the AS/RA for the period ending on October 31, 1979 (See, Notice of Extension, 44 FR 22804, issued on April 17, 1979).

On June 28, 1979, the AS/RA issued a notice of a proposed rate order (44 FR 40118, issued on July 9, 1979). On October 2, 1979, the AS/RA issued a rate order confirming and approving rates to be placed in effect on an interim basis.¹²

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 prior orders,¹³ the Commission has stated that it must insure that such rates satisfy the standards established under the federal power marketing statutes. Those statutes (including Section 9(c) of the Reclamation Act of 1939) require, *inter alia*, that rates be set at levels which provide sufficient revenues to recover operating costs and to repay the federal investment within a reasonable time.

Our authority under the power marketing legislation does not include the power to modify rates.¹⁴ The responsibility for developing rates rests initially with the Administrator of WAPA. The designated Assistant Secretary is authorized to review those

¹¹ (43 FR 12361, issued on March 24, 1978). ERA stated that it did not approve the Phase II rate increase because "the procedures do not provide interim rate approval in excess of one year and because ERA does not wish to prejudice the important issues suggested by the two tier rate structure." (*Id.*)

¹² In rate Order No. WAPA-2, the AS/RA, *inter alia*, (1) approved a single rate structure (5.11 mills per kilowatt-hour for energy and \$2.00 per kilowatt-month for capacity) for all CVP customers, (2) affirmed a 10% increase in rates above the short-term rate approved by ERA, and (3) directed that the new rates become effective as of November 1, 1979, on an interim basis.

¹³ E.g., *Bonneville Power Administration*, Docket No. EF80-2011, order issued November 21, 1980; *Southwestern Power Administration*, Docket No. EF79-4011, order issued June 3, 1981.

¹⁴ See, e.g., *Southeastern Power Administration*, Docket No. EF79-3021, order issued February 27, 1981; *Bonneville Power Administration*, Docket No. EF80-2011, order issued November 21, 1980; and *Southwestern Power Administration*, Docket No. EF79-4011, order issued June 3, 1981.

rates for confirmation and approval on an interim basis. Finally, the interim rates and supporting record are reviewed by this Commission for final confirmation and approval, disapproval, or remand.

Initially, we find that participation in this proceeding by the Districts, NCPA, SMUD, and Santa Clara is in the public interest and that good cause exists to permit PG&E and the Cities to intervene out of time. Consequently, we shall grant the petitions to intervene.

Upon review of WAPA's proposed rates, the supporting materials provided through the Assistant Secretary, and the comments of interested parties, the Commission concludes that the statutory requirements have not been satisfied and that major deficiencies in WAPA's filing compel our disapproval of the rates submitted in this docket. As is evident below, we do not find it necessary or appropriate to second-guess the Assistant Secretary on each matter raised by the intervenors. Nonetheless, we can conclude that the rates which have been submitted for approval would fail to provide revenues to the federal treasury adequate to properly recover the government's capital investments.

SMUD has argued that the extension of interim rates by the Assistant Secretary is invalid "(a) because it did not conform to the (p)rocedures previously established by the Assistant Secretary and published in the Federal Register on February 7, 1979, at 44 Fed. Reg. 7797, and (b) because it exceeded the authority delegated in the Assistant Secretary by the Secretary by an (o)rder published in the Federal Register on December 28, 1978, at 43 Fed. Reg. 60636." The Commission, however, is not disposed to inquire into the legal authority of the Assistant Secretary to extend the effective date of interim rate orders, inasmuch as such procedural questions are beyond the scope of our rate approval authority. (Cf., *U.S. Secretary of Energy, Bonneville Power Administrator*, Docket No. EF80-2011, Order Remanding Rates Without Prejudice, issued November 21, 1980, at p. 15).

Concerning the project dependable capacity (PDC) issue,¹⁵ a brief

explanation of its history is in order. Originally, the PDC was set contractually at 875 megawatts subject to a redetermination based on certain operation and efficiency tests (Article 11). Since the filing of the contract in 1967, the PDC level was first increased to 925 megawatts through 1974. As a result of efficiency and operational studies, the Bureau of Reclamation and PG&E in January 1975 agreed that PDC should be reduced to 880 megawatts in 1975, 851 megawatts in 1976, 849 megawatts in 1977, 844 megawatts in 1978, and 828 megawatts in 1979.

The CVP hydro projects were able to operate at their planned capacity until a 1976-1977 drought. As a result of the drought conditions, on July 1, 1977, the bureau and PG&E agreed to reduce the designated PDC level to 554 megawatts. When winter rains of 1977-1978 later filled CVP's reservoirs to above-normal storage levels, WAPA considered the 1976-1977 drought to have been an aberration and unilaterally increased the PDC level to 827 megawatts (effective from July 1, 1978, through the end of that year) and to 812 megawatts for 1979. PG&E refused to make payments to CVP based on the 1978 and 1979 revised PDC levels, contending that, under the PG&E contract, the post-drought PDC level of 554 megawatts could not be increased for a five year period unless otherwise agreed.¹⁶ The Commission estimates that the revenue loss caused by PG&E's refusal to pay will be approximately \$6.6 million annually (PDC valued at project rates).

SMUD and NCPA opposed PG&E's position. They contended that the power repayment study should assume a PDC level of at least 925 megawatts, since each change in the PDC level (which has not been filed with the Commission) below 925 megawatts constitutes an illegal change in rate in violation of section 205(c) of the Federal Power Act. With respect to PG&E's violation of

The PDC is important because it determines the amount of capacity and payments for capacity and energy purchased and sold between PG&E and CVP. (See Articles 11, 21 & 22).

¹⁵ Although negotiations between WAPA and PG&E are underway, PG&E is currently making payments based on the 554 megawatt PDC level. Article 11 of the PG&E contract provides that:

At the request of either party made not more often than once a year, Project Dependable Capacity shall be reviewed and, if necessary, shall be redetermined. Any such redetermined Project Dependable Capacity shall become effective four years from the date of such request, or at such other time as the parties may agree upon * * *

By letter dated January 18, 1968 to Mr. John F. Bonner (Senior V. President of PG&E) from E. F. Sullivan (Assistant Regional Director, Mid-Pacific Region, Bureau of Reclamation), a change from the four year notice period of Article 11 to the current 5 year notice requirement was approved by the Department of the Interior.

contract argument, the Assistant Secretary ruled that PG&E's argument "is unreasonable, when in fact 827 megawatts was made available from July 1 to December 31, 1978, and 812 megawatts is currently being made available." (WAPA Order No. 2, *supra*, at 15.) Regarding the illegal change in rate argument propounded by SMUD and NCPA, the Assistant Secretary held:

Both the FERC staff [Docket No. E-7777 (Phase II), (December 6, 1978)] and the FERC itself (Docket Nos. E-7796 and E-7777 (Phase II), (44 FR 1782) [January 8, 1979]) support the position that PDC is a rate which must be filed with FERC.¹⁷ We believe that NCPA's and SMUD's arguments have merit. However, in view of the facts that neither the FERC nor a court has ruled on the issue of what PDC should be, the matter is in dispute between WAPA and PG&E, and that CVP has been making water available to PG&E for generation on the assumption that PDC is in accordance with WAPA's declaration, we believe the assumption in the Revised Power Repayment Study is appropriate. Making this assumption in the study does not limit the ability of NCPA, SMUD or the Department to make an effective argument that PDC is a rate which PG&E cannot change without filing a new rate schedule with the FERC. The assumption can be changed in the next Power Repayment Study if there is a change in the status of the controversy. (footnote added) (WAPA Order No. 2, *supra*, at 16).

In their petitions to intervene before this Commission, SMUD and NCPA have challenged the Assistant Secretary's decision which established the PDC at levels less than 925 megawatts, raising essentially the same arguments as those discussed above.¹⁸

In its comments filed on January 4, 1980, PG&E averred, among other things, that "(SMUD and NCPA) conveniently overlook(ed) the fact that the initial increase in PDC from 825 megawatts to 925 megawatts was not filed * * *". Moreover, PG&E states that "it was

¹⁷ In the E-7777 proceeding, the presiding judge ruled that the PDC question was beyond the Commission's jurisdiction (Tr. CH-18386) and stated that he would issue a written order on the PDC question. On May 6, 1980, the staff filed a motion with the Commission which, *inter alia*, requested reconsideration of the presiding judge's ruling on the PDC issue. The Commission deferred ruling on the PDC issue until the issuance of the presiding judge's written order. (See, *Pacific Gas & Electric Company, Pacific Power & Light Company*, Docket Nos. E-7777 (Phase II) and E-7796, Order Denying Motions For Extraordinary Relief, issued August 29, 1980). To date, the presiding judge has not issued a written order on the PDC issue.

¹⁸ SMUD also argues that PDC should be reevaluated and raised to a figure greater than 925 megawatts.

¹⁵ As defined in Article 9 of the PG&E contract, PDC is:

(the lowest electric capacity available for use within Contractor's Service Area, estimated in accordance with the methods used in Reclamation Study, which could be available with energy support from Project Plants in any month during the most adverse period of stream-flow conditions of record (as set forth and applied in Reclamation Study), after deducting the estimated capacity required from Project Plants for Project Load during Contractor's Peak Load Period.

physically impossible for WAPA to support a PDC of 925 [megawatt] with the water available to the CVP during the drought." PG&E further argues that there is no legal requirement for changes in the PDC to be filed with the Commission because: 1) the PDC is not subject to the Commission's jurisdiction; 2) a change in PDC is not a change in rate which is required to be filed with the Commission; and 3) even if a change in PDC is required to be filed with the Commission, the failure by a party to comply with the filing requirement would not excuse either party from compliance with the terms of the contract.

Regarding the filed rate and violation of contract questions, we believe it prudent to continue to defer ruling on all issues pertaining to the PDC until after the presiding judge issues the anticipated order in the E-7777 proceeding. (See note 17 *supra*.) It is clear, however, that WAPA is not now collecting the revenues from PG&E which the rates are designed to produce. Even assuming, *arguendo*, the validity of the Assistant Secretary's assumptions, we note that if WAPA or the Assistant Secretary take no affirmative action to challenge PG&E's refusal to pay the rate anticipated to be collected by the repayment study, a substantial shortfall in revenues will result.

SMUD has also raised an additional contract issue. SMUD objects to the proposed rate increase, pointing to a contractual provision with WAPA that prohibits more than one rate increase to SMUD within a five year period.¹⁹ SMUD states that it had originally agreed not to raise this contractual provision as a defense to the rate increase proposed in this proceeding. According to SMUD, it agreed to the stipulation on the condition that the Phase II rates would become legally effective on or before May 25, 1978. Since the Phase II rates were never approved, SMUD argues that it is no longer bound by its stipulation. We are not able to determine from the filing²⁰ or SMUD's pleading whether SMUD's argument has merit. In any event, the Commission's view is that this is a matter best resolved by the Assistant Secretary in reviewing rates for preliminary implementation, or by an appropriate reviewing court.

¹⁹ SMUD contends that because there was a rate change on May 25, 1978, the proposed rate increase to SMUD cannot become effective prior to May 25, 1983.

²⁰ SMUD has not filed the subject contract with this Commission. Nor has the Assistant Secretary submitted a copy of the contract with this filing for our review.

Our review of the project cost data reveals improper treatment of several interest-related expenditures. First, the filing does not include approximately \$27 million of interest during construction (IDC) associated with projects included in the CVP system that were placed in service between 1944 and 1968. The omission of IDC in the calculation of project costs is contrary to the practices and procedures recommended in (1) both the May, 1950, and May, 1958 Reports to the Federal Inter-Agency River Basin Committee on Proposed Practices of Economic Analysis of River Basin Projects, (2) the U.S. Army Corps of Engineers' Manual for Cost Allocations for Multiple Purpose Projects, EM1160-2-101, and (3) Circular No. A-47 from the Executive Office of the President, Bureau of the Budget dated December 31, 1952, to the heads of executive departments and establishments. It appears that additional annual revenues of approximately \$2.9 million would be needed to repay the excluded IDC.

In addition, WAPA failed to assess approximately \$100,000 of interest expenses associated with new project replacements and additions for the year in which they commenced service. The generally accepted procedure required by DOE regulations is to apply one-half of the applicable interest rate on the investment during the year it is made. (See Department of Interior Manual adopted by DOE Order RA6120.2, issued September 1979).

WAPA has also followed the practice of repaying selected high-interest investments ahead of the required repayment date while repayment of low-interest investment is postponed beyond the required repayment date. We believe that this repayment methodology results in an unauthorized adjustment in an amortization schedule which will result in diminished interest income on government investments. It appears that the use of compound interest amortization would increase stated revenue requirements by about \$1.7 million.

We further note that WAPA's filing assumes that the cost of wheeling service provided to CVP by PG&E will be at the rate of 1.2 mills per kilowatt hour. However, since March 1, 1976, CVP has been paying a much higher cost (increase estimated at approximately \$1.5 million annually) for wheeling, subject to refund.²¹

²¹ In Docket No. ER76-532, PG&E filed with the FPC a proposed increase in rates for wheeling CVP's power over PG&E's transmission lines. By order issued March 29, 1976, the Commission accepted the filing, suspended the rates for one day, and set the case for hearing. An Initial Decision was

Our review of the instant filing also reveals that the 1976 Adjusted Cost Allocation Report for CVP lacks detailed data related to the allocation of the Corps' New Melones Project. Further, we note that the cost allocation study will not be finalized until the construction of all parts of the New Melones project are completed. As a result, we are unable to substantiate the precise amount of project investment costs which are to be repaid from power revenues.²² It does not appear that likely changes in the allocation would have a significant impact on the filed rates, and we have no basis on which to conclude that the tentative allocation of costs in the instant filing is unreasonable. However, we reserve final judgment as to the appropriateness of the allocation procedure pending receipt of a definitive report on project investment costs.

Conclusion

As stated before, the Commission has an obligation to insure that the rates submitted to us for our approval satisfy the standards established under the Federal power marketing statutes. Those statutes (including Section 9(c) of the Reclamation Act of 1939) require, among other things, that the rates be set at levels which provide sufficient revenues to recover operating costs and to repay the federal investment within a reasonable time. The rates presently before us do not satisfy these standards. We find that WAPA has underestimated its costs by failing to reflect costs associated with interest during construction on a number of projects, not assessing a half-year's interest during the year in which replacements are expected to be made, and underestimating its costs of wheeling by PG&E. The total effect of these three items is to underestimate annual costs and associated revenue requirements by about \$4.5 million or 5.7 percent of total revenue. In addition to the long-term revenue deficiencies, it appears that the issue of project dependable capacity, and PG&E's refusal to pay the amount charged by WAPA, may result in a short-term revenue deficiency for four years, amounting to about \$6.6 million annually and resulting in a widening of the disparity between costs and revenues for this period by 8.4 percent.

In light of the above deficiencies, we shall disapprove the proposed rates and

issued in that proceeding on June 17, 1981. While we have no intention of prejudging the outcome of that proceeding, we note that the Initial Decision approved a substantial portion of the rate increase.

²² The Commission expects to receive a final report on project investment costs in a future filing.

forewarn the Assistant Secretary that the Commission, in the future, will not look favorably upon any federal rate filing which, *inter alia*, does not establish rates at levels which provide sufficient revenues to recover operating costs and to repay the federal investment within a reasonable time. Consistent with Delegation Order No. 0204-33, the Assistant Secretary shall have 120 days to submit substitute rates for our approval which will recover the deficiencies noted in this order.²³

The Commission orders

(A) The rates and charges placed in effect on an interim basis by the Assistant Secretary and submitted in this docket, are hereby disapproved and rejected. Within 120 days from the issuance of this order, WAPA and the Assistant Secretary shall submit substitute rates for our approval on a final basis which will recover the deficiencies noted in the order.

(B) The petitions to intervene filed by the Districts, NCPA, SMUD, Santa Clara, Cities and PG&E are hereby granted subject to the rules of the Commission, *provided, however*, that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *provided, further*, that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(C) The Secretary shall promptly publish this Order in the Federal Register.

By the Commission.
Kenneth F. Plumb,
Secretary.

[FR Doc. 82-12826 Filed 5-11-82; 8:45 am]
BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs

Civil Uses of Atomic Energy and Peaceful Uses of Atomic Energy; Between United States and European Atomic Energy Community (EURATOM)

Proposed Subsequent Arrangement

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"

²³ If contractual prohibitions preclude recovery of costs from certain customers, it may be necessary to reallocate such costs so that the government is assured of recovering its investment as required by statute.

under the Agreement for Cooperation Between the Government of the United States of America and the Government of Spain Concerning Civil Uses of Atomic Energy, 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 following retransfer:

RTD/EU (SP)-15, from the Jose Cabrera Nuclear Power Station in Spain to British Nuclear Fuels Ltd., in the United Kingdom, four irradiated fuel elements for reprocessing and storage of the recovered nuclear material. The fuel elements contain 5.573 kilograms of uranium enriched to 1.06% in U-235, and 56.5 grams of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than May 27, 1982.

Dated: May 6, 1982.

For the Department of Energy.

Harold D. Bengelsdorf,

Director, Office of International, Nuclear and Non-Proliferation Policy.

[FR Doc. 82-12913 Filed 5-11-82; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders Filed; Week of April 12 through April 16, 1982

During the week of April 12 through April 16, 1982, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR § 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

May 3, 1982.

Southern Terminal and Transport Co.,
Tallahassee, Fla.; HRO-0042 No. 6
residual fuel oil

On April 16, 1982, Southern Terminal and Transport Co. (ST&T), 122 Appleyard Drive, Tallahassee, Florida 32302, filed a Notice of Objection to a Proposed Remedial Order which the Southeast District Office of Enforcement of the Economic Regulatory Administration (ERA) issued to the firm on March 17, 1982. In the PRO, the ERA found that ST&T sold No. 6 residual fuel oil during the period November 1, 1973 through April 30, 1974 at prices in excess of those permitted under 6 CFR 150.359 and 10 CFR Part 212, Subpart F of the Mandatory Petroleum Price Regulations. The PRO alleges that ST&T's actions resulted in overcharges of \$4,275,298. The PRO directs ST&T to refund this amount, plus interest, to the Department of Energy for deposit into the Treasury of the United States.

Vermont Morgan Corp., Shoreham, Vt.;
HRO-0041 motor gasoline

On April 13, 1982, Vermont Morgan Corp., Main Route-Box 170, Shoreham, Vermont 05770, filed a Notice of Objection to a Proposed Remedial Order which the DOE Northeast District Office of Enforcement issued to the firm on February 8, 1982. In the PRO the Northeast District found that during the period April 1, 1979 through June 30, 1979, the firm charged its customers prices in excess of those permitted under 10 CFR 212.93 of the Mandatory Petroleum Price Regulations. According to the PRO the Vermont Morgan Corp. violation resulted in \$350,134 of overcharges.

[FR Doc. 82-12918 Filed 5-11-82; 8:45 a.m.]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 1G2470/T342; PN FRL 2120-4]

Metamidophos; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the insecticide methamidophos, O,S-dimethyl phosphoramidothioate, in or on the raw agricultural commodity safflower seed. This temporary tolerance was requested by Chevron Chemical Company.

DATE: This temporary tolerance expires August 31, 1982.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2600).

SUPPLEMENTARY INFORMATION: Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, has requested the establishment of a temporary tolerance for residues of the insecticide metamidophos, in or on the raw agricultural commodity safflower seed at 0.3 part per million (ppm). A related document establishing a feed additive regulation permitting residues of metamidophos in or on safflower meal appears elsewhere in this issue of the Federal Register.

This temporary tolerance will permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 239-EUP-98 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.
2. Chevron Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires August 31, 1982. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience or

scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

As required by Executive Order 12291, EPA has determined that this temporary tolerance is not a "Major" rule and therefore do not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted temporary tolerances from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: April 27, 1982.

Douglas D. Campt,
Director, Registration Division, Office of
Pesticide Programs.

[FR Doc. 82-12531 Filed 5-11-82; 8:45 am]

BILLING CODE 5560-50-M

[OPP 35000/4; PH FRL 2122-5]

Completion of Pre-RPAR Review; Five Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has concluded its pre-RPAR review of five chemicals: cacodylic acid and salts, piperonyl butoxide, S,S,S-tributyl phosphorothioate (DEF), tributyl phosphorothioate (Merphos), and terbutryn. Available data indicate that these chemicals do not present risks of unreasonable adverse effects to man or the environment. The Agency has determined that Rebuttable Presumption Against Registration (RPAR) reviews are not warranted for these chemicals at this time and has removed them from its list of suspect chemicals. A copy of each decision document summarizing the Agency's review of these chemicals and the rationale for its conclusions is available for public viewing at the address below.

ADDRESS: The decision documents are available for viewing from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, from: Document Control Officer (TS-793), Office of Pesticides

and Toxic Substances, Environmental Protection Agency, Rm. E-107, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Laurence Chloupek, Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Environmental Protection Agency, Room 726, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-8193).

SUPPLEMENTARY INFORMATION: Pre-RPAR review is the initial phase of EPA's process to determine whether a chemical poses unreasonable risks to man or the environment. During this phase, the Office of Pesticide Programs (OPP) conducts an intensive review of available information on a pesticide to determine whether such information indicates that a pesticide may pose a risk of unreasonable adverse effects. If the Agency concludes that a criterion for initiating an RPAR review has been met or exceeded, OPP will commence such a review. The review includes an analysis balancing the risks posed by the pesticide against the benefits of its use. However, if none of the risk criteria are met, the Agency will not initiate an RPAR review.

Based on a review of relevant information regarding potential risks, the Agency has concluded that an RPAR review is not warranted at this time for the following chemicals. Each of the chemicals is currently registered by EPA for use as a pesticide.

Chemical. Cacodylic Acid and Salts.

Reasons for referral. Possible oncogenicity, mutagenicity, teratogenicity, fetotoxicity, reproductive effect.

Reasons for not initiating RPAR review. Available data do not support a determination that the chemical meets or exceeds any of the criteria for risk set forth in the Regulations. A dermal absorption study is being voluntarily run by the registrant and is near completion. It will help the Agency to determine the rate of dermal absorption of the chemical and the associated risks of exposure. After obtaining the results of the study, the Agency may request additional fetotoxicity and teratogenicity studies pursuant to section 3(c)(2)(B) of FIFRA to support continued registration of the pesticide. Voluntary label modifications are being negotiated with the industry which would require the use of respirators or masks for knapsack/hand sprayer applications and home uses for weed control or lawn renovations.

Chemical. Piperonyl butoxide.

Reasons for referral. Possible carcinogenicity, carcinogenicity.

Reasons for not initiating RPAR review. Adequate data are lacking to enable the Agency to determine whether the chemical meets or exceeds any of the criteria for risk set forth in the Regulations. Pursuant to section 3(c)(2)(B) of FIFRA, the Agency plans to request data pertaining to oncogenicity, mutagenicity, reproduction and metabolism. Data on product chemistry will also be requested to determine whether safrole or dihydrosafrole (known carcinogens) are present as possible contaminants in the final technical product.

Chemical. S,S,S-tributyl phosphorotrithioate.

Reason for referral. Possible neurotoxicity.

Reasons for not initiating RPAR review. Based on available data, and in light of forthcoming labeling restrictions, the Agency believes that an adequate margin of safety exists. Labeling restrictions pertaining to the use of protective clothing will be voluntarily added to labels by registrants and are expected to reduce risk to applicators to acceptable levels.

Chemical. Tributyl phosphorotrithioate.

Reason for referral. Possible neurotoxicity.

Reasons for not initiating RPAR review. Based on available data, and in light of forthcoming labeling restrictions, the Agency believes that an adequate margin of safety exists. Labeling restrictions pertaining to the use of protective clothing will be voluntarily added to labels by registrants and are expected to reduce risk to applicators to acceptable levels.

Chemical. Terbutryn.

Reason for referral. Carcinogenicity.

Reasons for not initiating RPAR review. Agency will require that all pesticide applicators wear protective clothing and equipment while mixing and loading pesticide products containing terbutryn. Consequently, there will be no risks of unreasonable adverse effects to applicators. In addition, the Agency has determined that there are no risks of unreasonable adverse effects to the general population from consuming terbutryn treated crops.

Dated: May 3, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

FR Doc. 82-12879 Filed 5-11-82; 8:45 am

BILLING CODE 5560-50-M

[OPP-30217; PH FRL-2122-7]

Applications To Register Pesticide Products Containing New Active Ingredients; Rhone-Poulenc Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by June 11, 1982.

ADDRESS: Written comments, identified by the document control number (OPP-30217) and the file or registration number, should be submitted to:

Henry Jacoby, Product Manager (PM-21), Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered pesticide products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Applications Received

1. File Symbol: 359-TNL.

Applicant: Rhone-Poulenc Inc., Agrochemical Division, P.O. Box 125, Monmouth Junction, NJ 08852.

Product name: Fosetyl-AL Technical Fungicide.

Active ingredient: Aluminum tris (O-ethyl phosphonate) 95%.

Proposed classification/Use: General.

For formulation of fungicides only.

Type registration: Conditional.

2. File Symbol: 359-TNA.

Applicant: Rhone-Poulenc Inc., Product name: Aliette Fungicide.

Active ingredient: Aluminum tris (O-ethyl phosphonate) 80.0%.

Proposed classification/Use: General. Controls phytophthora root rot on ornamentals.

Type registration: Conditional.

Notice of approval or denial of an application to register a pesticide product will be announced in the Federal Register. Except for such material protected by section 10 of FIFRA, the test data and other scientific information deemed relevant to the

registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing such comments telephone the product manager's office to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended).

Dated: April 29, 1982.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

FR Doc. 82-12879 Filed 5-11-82; 8:45 am

BILLING CODE 5560-50-M

[OPP-66092; PH FRL 2122-1]

Certain Pesticide Products; Intent to Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms requesting voluntary cancellation of registration of their pesticide products in compliance with section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. Production of these products after the effective date of cancellation will be considered a violation of the Act unless continued registration is requested.

EFFECTIVE DATE: June 11, 1982.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E. 401, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Lela Sykes, Process Coordination Branch (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 706, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7406).

SUPPLEMENTARY INFORMATION: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

Registration No.	Product name	Registrant	Date registered
168-20	Wasco Brand Formaldehyde Solution U.S.P.	Great Western Chemical Co., 808 Southwest 15th Ave., Portland, OR 97205	Sept. 11, 1950
168-336	Wasacolor Tablets	do.	Apr. 1, 1968
168-393	Wasco Chlorine Tablets for Swimming Pools	do.	Aug. 7, 1967
168-400	Wasco Swimming Pool Algicide and Surface Sanitizer	do.	Oct. 3, 1967
201-184	Shell Aldrin Emulsifiable Concentrate No. 2	Shell Chemical Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036	Sept. 6, 1968
201-187	Aldrin 4 OS No. 1	do.	Sept. 15, 1966
201-245	Aldrin 4 Emulsible Concentrate for Professional Use	do.	Nov. 6, 1968
201-316	Shellchlor 8 Emulsible Concentrate Insecticide	do.	Nov. 22, 1971
239-1522	Ortho Lawn Disease Control	Chevron Chemical Co., Ortho Division, 940 Hensley St., Richmond, CA 94801	July 8, 1960
239-2073	Orthocid Sol Treater X-W	do.	Mar. 10, 1965
239-2162	Ortho PCNB 80 Dust Concentrate	do.	Jan. 17, 1966
239-2213	Soil Treater 3 X	do.	May 5, 1967
802-494	Miller's Terracolor 20 D	Charles H. Lilly Co., 7737 NE Killingsworth, Portland, OR 97218	Nov. 16, 1972
802-495	Miller's Mosquitocide A-4	do.	Mar. 8, 1973
802-496	Miller's Mosquitocide A-2G	do.	Feb. 21, 1973
1544-4	Curran Scented Moth Cakes & Deodorants	Frank J. Curran Company, 6101 South Lemont Rd., Downers Grove, IL 60515	July 1, 1948
1544-10	Curran Naphthalene Moth Balls	do.	Aug. 25, 1948
1544-19	Curran Zorex for Moth Protection	do.	Aug. 7, 1950
1544-38	Curran Naphthalene Moth Flake Crystals	do.	Apr. 13, 1965
8340-1	Brassicol 20	American Hoechst Corp., 202-206 Highway, Somerville, NJ 08876	Jan. 19, 1965
46946-84	Terracolor 10% Granular	TH Agriculture and Nutrition Co., Crop Protection Division, 5220 Speaker Rd., Kansas City, KS 66105	Dec. 6, 1967
46946-87	Terracolor captan 10-10	do.	Jan. 10, 1968
46946-163	20% Terracolor Dust	do.	Aug. 1, 1963
46946-176	10% Terracolor Dust	do.	Apr. 1, 1966

The Agency has agreed that such cancellation shall be effective June 11, 1982 unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation may legally continue in commerce until the supply is exhausted, or for 1 year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued, may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "(OPP-66092)" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office, Room E-107,

at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973 89 Stat. [751, 7 U.S.C. 136])

Dated: April 23, 1982.

Edwin L. Johnson,
Director, Office of Pesticide Programs.

[FR Doc. 82-12876 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[180606; PH-FRL-2122-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below. Also listed below are four crisis exemptions initiated by California.

DATES: See each exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name and room number of the contact person. The following information applies to all contact people: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Alabama Department of Agriculture and Industries for the use of benomyl on wheat to control powdery mildew in

Alabama, effective from February 17, 1982, to May 30, 1982. EPA has not yet made its final determination concluding the rebuttable presumption against registration (RPAR) of pesticide products containing benomyl. (Jack E. Housenger, Rm. 714A, CM#2).

2. Arkansas State Plant Board for the use of butachlor and propanil on dry-seeded rice to control aquatic weeds, broadleaf weeds, and grasses in Arkansas, effective from March 17, 1982, to August 31, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

3. Arkansas State Plant Board for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Arkansas, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

4. California Department of Food and Agriculture for the use of triadimefon on grapes to control powdery mildew in California, effective from February 28, 1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

5. Connecticut Department of Environmental Protection for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Connecticut, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

6. Delaware Department of Agriculture for the use of azinphosmethyl on carrots for processing, to control carrot weevils in Delaware, effective from February 17,

1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

7. Georgia Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Georgia, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

8. Idaho Department of Agriculture for the use of dinoseb on lentils to control broadleaf weeds in the northern counties of Idaho, effective from March 17, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

9. Idaho Department of Agriculture for the use of metalaxyl on hops to control downy mildew in Idaho, effective from April 1, 1982 to May 31, 1982. (Libby Welch, Rm. 714A, CM#2).

10. Indiana Office of State Chemist and Seed Commissioner for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Indiana, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

11. Louisiana Department of Agriculture for the use of butachlor and propanil on dry-seeded rice to control the aquatic weed complex, barnyardgrass, and sprangletop in Louisiana, effective from March 17, 1982, to September 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

12. Maryland Department of Agriculture for the use of azinphosmethyl on carrots for processing, to control carrot weevils in Maryland, effective from February 17, 1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

13. Maryland Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Maryland, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

14. Mississippi Department of Agriculture and Commerce for the use of benomyl on wheat to control powdery mildew in Mississippi, effective from February 17, 1982 to May 30, 1982. EPA has not yet made its final determination concluding the rebuttable presumption against registration (RPAR) of pesticide products containing benomyl. (Jack E. Housenger, Rm. 714A, CM#2).

15. Mississippi Department of Agriculture and Commerce for the use of butachlor and propanil on dry-seeded rice to control aquatic weeds and sprangletop in Mississippi, effective from March 2, 1982, to July 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

16. New York Department of Environmental Conservation for the use of triadimefon on grapes for processing, excluding raisins, to control powdery mildew in New York, effective from February 26, 1982, to September 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

17. Oregon Department of Agriculture for the use of triadimefon on apples and winter pears to control powdery mildew in Oregon, effective from February 26, 1982, to June 30, 1982. (Libby Welch, Rm. 714A, CM#2).

18. Clemson University, South Carolina for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in South Carolina, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

19. Texas Department of Agriculture for the use of butachlor and propanil on dry-seeded rice to control grasses and broadleaf weeds in Texas, effective from March 2, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

20. Utah Department of Agriculture for the use of triadimefon on apples to control powdery mildew in Utah, effective from February 26, 1982, to July 31, 1982. (Libby Welch, Rm. 714A, CM#2).

21. Virginia Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in layer poultry houses located near urban or suburban areas only, to control flies in Virginia, effective from March 18, 1982, to December 31, 1982. (Libby Welch, Rm. 714A, CM#2).

22. Washington Department of Agriculture for the use of dinoseb on lentils to control broadleaf weeds in Spokane and Whitman Counties, Washington, effective from March 17, 1982, to June 15, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

23. West Virginia Department of Agriculture for the use of fenamiphos in bearing apple orchards to control nematodes in West Virginia, effective from March 5, 1982, to April 30, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

24. Washington Department of Agriculture for the use of fenamiphos on raspberries to control root lesion nematodes in Washington, effective from February 17, 1982, to April 1, 1982. (Libby Welch, Rm. 714A, CM#2).

25. Washington Department of Agriculture for the use of triadimefon on apples and pears to control powdery mildew in Washington, effective from February 26, 1982, to June 30, 1982. (Libby Welch, Rm. 714A, CM#2).

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on March 12, 1982, for the use of *Bacillus thuringiensis* in urban areas to control gypsy moths. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until March 9, 1983. (Libby Welch, Rm. 714A, CM#2).

2. California Department of Food and Agriculture on March 5, 1982, for the use of metalaxyl on hops to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expected to last until May 31, 1982. (Jack E. Housenger, Rm. 714A, CM#2).

3. California Department of Food and Agriculture on March 10, 1982, for the use of methiocarb on tomatoes to control bird depredation. Since it was anticipated that this program would be needed for more than 15 days, the California Department of Food and Agriculture has requested a specific exemption to continue it. The need for this program is expected to last until June 15, 1982. (Libby Welch, Rm. 714A, CM#2).

4. California Department of Food and Agriculture on February 26, 1982, for the use of paraquat on kiwi fruit to control annual weeds and grasses. Since it was anticipated that this program would be needed for more than 15 days, the California Department of Food and Agriculture has requested a specific exemption to continue it. (Libby Welch, Rm. 714A, CM#2).

(Sec. 18, as amended, 92 Stat. 819 [7 U.S.C. 136])

Dated: April 23, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 82-12877 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[PF-272; PH-FRL-2122-2]

Pesticide Petitions; Rhone-Polenc Chemical Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Rhone-Polenc Chemical Co., has amended three pesticide petitions by revising tolerance levels and to reflect the combined residues of the herbicide asulam and its metabolites.

ADDRESS: Written comments to: Richard Mountfort, Product Manager (PM) 23,

Registration Division, Office of Pesticide Programs (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Written comments may be submitted while the petitions are pending before the Agency. The comments are to be identified by the document control number "(PF-272)" and the specific petition number. All written comments filed in response 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: PM-23, Richard Mountfort, (703-558-1830).

SUPPLEMENTARY INFORMATION: Rhone-Polenc Chemical Co., (Formerly Rhodia, Inc.), Monmouth, NJ 08852, submitted the following pesticide petitions (PP) proposing to amend 40 CFR 180.360 by establishing tolerances for residues of the herbicide asulam in or on certain agricultural and meat commodities as follows:

PP 6F1716 (41 FR 4359, January 29, 1976)—alfalfa forage at 45 parts per million (ppm), meat and meat byproducts at 0.1 ppm, and milk at 0.05 ppm.

PP 6F1717 (41 FR 4359, January 29, 1976)—grass pasture and grass rangeland at 45 ppm, meat and meat byproducts at 0.1 ppm, and milk at 0.05 ppm.

PP 6F1766 (41 FR 18140, April 30, 1976)—flax seed and flax straw at 2.0 ppm.

Rhone-Polenc Co. has amended the above petitions to reflect the combined residues of the herbicide asulam (methyl-4-sulfamylcarbamate) and its metabolites containing sulfanilamide moiety (N^4 -acetylasulam) and (N^4 -acetylsulfanilamide) as asulam equivalents, following conversion of the total residue to the common moiety N^4 -acetylsulfanilamide, in or on the agricultural and meat commodities fresh alfalfa, clover, and grass at 35 ppm; hay of alfalfa, clover, grass at 130 ppm; flax straw, flax seed and its fractions, meal, oilseed cake, refined oil, and soapstock at 3 ppm; meat, fat, and meat byproducts of cattle, hogs, horses, and sheep at 1.0 ppm; meat, fat, and meat byproducts of poultry at 0.2 ppm; milk at 0.3 ppm; and eggs at 0.03 ppm.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 136))

Dated: May 3, 1982.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 82-12875 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 82-25]

Sun Chemical Export Corp. v. Lykes Brothers Steamship Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sun Chemical Export Corporation against Lykes Brothers Steamship Company was served May 4, 1982. Complainant alleges that respondent has subjected it to an overcharge of rates for ocean transportation.

This proceeding has been assigned to Administrative Law Judge William Beasley Harris. 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 statement, 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. 82-12925 Filed 5-11-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dixie Bancshares Corporation; Acquisition of Bank

Dixie Bancshares Corporation, New Madrid, Missouri, has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Hunter Farms, Inc., New Madrid, Missouri. 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)).

Dixie Bancshares Corporation, New Madrid, Missouri, is also engaged in the following nonbank activities: servicing of certain existing notes receivable. In addition to the factors considered under section 3 of the Act (banking factors), the Board will consider the proposal in the light of the company's nonbanking activities and the provisions and prohibitions in section 4 of the Act (12 U.S.C. 1843).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 4, 1982. 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, May 5, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12830 Filed 5-11-82; 8:45 am]

BILLING CODE 6210-01-M

Dixie Bancshares Corp.; Proposed Retention of Financing Activities

Dixie Bancshares Corporation, New Madrid, Missouri, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue servicing its existing notes receivable.

These activities would be performed from offices of Applicant in New Madrid, Missouri, and the geographic areas served are New Madrid and Sikeston, Missouri. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 5, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12829 Filed 5-11-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Federal Reserve Bank of Cleveland (Harry W. Huning, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Prestonsburg Bancshares, Inc.*, Prestonsburg, Kentucky, to become a bank holding company by acquiring 83.3 percent of the voting shares of First Commonwealth Bank of Prestonsburg, Prestonsburg, Kentucky. Comments on this application must be received not later than June 4, 1982.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern BancShares (N.C.), Inc.*, Mount Olive, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Southern Bank and Trust Company, Mount Olive, North Carolina. Comments on this application must be received not later than June 4, 1982.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Early Bankshares, Inc.*, Early, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Early Savings Bank, Early, Iowa. Comments on this application must be received not later than June 4, 1982.

2. *Malden Bancorp, Inc.*, Malden, Illinois; to become a bank holding company by acquiring 50 percent or more of the voting shares of The Farmers and Traders State Bank of Malden, Malden, Illinois. Comments on this application must be received not later than June 4, 1982.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Larue Bancshares, Inc.*, Hodgenville, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of The Peoples State Bank, Hodgenville, Kentucky. Comments on this application must be received not later than June 4, 1982.

2. *Southeastern Indiana Bancorp.*, Vevay, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of Vevay Deposit Bank, Vevay, Indiana. Comments on this application must be received not later than June 1, 1982.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado River Bancorp*, Clifton, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Clifton, Clifton, Colorado. Comments on this application must be received not later than June 4, 1982.

2. *First Security of Beaver, Inc.*, Beaver, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of The First Security Bank, Beaver, Oklahoma. Comments on this application must be received not later than June 4, 1982.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Caprock Bancshares, Inc.*, Shallowater, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Eagle Bancshares, Inc., and, thereby acquire indirect control of its subsidiary, First State Bank of Shallowater, both of Shallowater, Texas. Comments on this application must be received not later than May 27, 1982.

2. *First Alamogordo Bancorp, Inc.*, Alamogordo, New Mexico; to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank in Alamogordo, Alamogordo, New Mexico. Comments on this application must be received not later than June 6, 1982.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice

President), 400 Sansome Street, San Francisco, California 94120:

1. *Transcorp*, Beverly Hills, California; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Beverly Hills, Beverly Hills, California. Comments on this application must be received not later than June 4, 1982.

Board of Governors of the Federal Reserve System, May 6, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-12831 Filed 5-11-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of establishment of a new Privacy Act system of records, 09-25-0151, "Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research," HHS/NIH/OD.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new Privacy Act system of records, 09-25-0151, "Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research," HHS/NIH/OD. We are also proposing routine uses for this system.

The National Institutes of Health (NIH) will use this system to make informed decisions on appropriate actions regarding awards of research funds to individuals who are or have been subjects of investigations or determinations of misconduct.

PHS invites interested persons to submit comments on the proposed routine uses on or before June 11, 1982.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget on April 30, 1982. The system of records will be effective 60 days from the date submitted to OMB unless PHS received comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the NIH Privacy Act

Coordinator at the address listed below. Comments received will be available for inspection Monday through Friday, between 9 a.m. and 3 p.m., in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT:

Dr. Kenneth Thibodeau, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205, or call 301-496-4606.

SUPPLEMENTARY INFORMATION:

In fulfilling its legislated mission, NIH awards grants-in-aid and contracts to universities, hospitals, laboratories and other public or private institutions and to individuals for biomedical research projects, for biomedical research centers, for communication and dissemination of information generated in biomedical research, and for training of researchers. Spending public funds in the form of such grants and contracts entails a responsibility to ensure that these funds are well spent and that the conduct of projects carried out under such awards conforms to the requirements of applicable laws and regulations and meets acceptable standards of scientific method and ethical practice. In general, HHS carries out this responsibility by requiring those who receive grants and contracts to submit progress reports and to maintain adequate records to permit a complete audit of the expenditure of the funds received. The Department also conducts and authorizes audits of these grants and contracts. In the case of research contracts, the agency oversees work done under the contract. Research involving human subjects also requires review of the research plans and procedures for obtaining informed consent from research subjects by local Institutional Review Boards.

In some special cases, individuals who are recipients of, or candidates for, awards may be subjects of investigations or determinations of misconduct. Such misconduct might consist of falsification of scientific data, misuse of public funds, or fraud. It might involve other violations or infractions of laws, regulations, or ethical standards, indicating that the individual does not fulfill the responsibilities and qualifications expected in the conduct of biomedical research or the expenditure of public funds. In such cases, NIH needs to consider whether it is appropriate to make or to continue awards of grants or contracts. Responsible officials need to consider the nature of allegations against such individuals, the strength of evidence, the status or outcome of investigations and the relevance of findings to the support of projects involving such individuals.

NIH will establish this system of records in order to meet this need.

This system will not be used in the conduct of any investigations. Rather, its purpose is to record information on the existence or results of investigations when this information is relevant to decisions on the award of funds to subject individuals. NIH may actively seek information from Executive Branch organizations responsible for conduct of investigations when it learns of such activities from other sources such as the media or third parties. Alternatively, other organizations, such as the HHS Office of the Inspector General, may on their own initiative inform NIH of investigations or determinations.

NIH will implement rigorous safeguards to prevent unauthorized disclosure. The records will be kept in locked file cabinets in secure offices. The system manager will disclose information on a regular basis only to senior officials responsible for grants and contracts, and only when they are considering whether to make or renew an award to a subject individual. These officials will decide in each case whether and how the information should be used in review of the actual or possible award. Thus operation of this system will balance individuals' rights to privacy with NIH's responsibility to protect the public interest.

The first two proposed routine uses derive directly from the purpose of the system. The first proposed routine use allows NIH to disclose factual information resulting from investigations to experts who review applications for grants or proposals for contracts. NIH will disclose information to such experts only when it bears directly on the scientific merit of the application or proposal, or when an unbiased review requires disclosing objective information in cases where allegations or other information concerning possible misconduct by a subject individual has become available from other sources such as the press.

The second routine use would allow NIH to disclose relevant information to other Federal agencies, such as the National Science Foundation, for purposes essentially the same as that of NIH, that is, in connection with award of a grant, contract or other benefit.

The third proposed routine use, allowing disclosure to the Department of Justice in response to Freedom of Information Act requests, will assist the agency to make an equitable decision in difficult cases where the public's right to know must be balanced against the individual's right to privacy.

The last proposed routine use permits disclosure to a congressional office. Disclosure to a congressional office would not violate the privacy of any individual because such disclosure would be made only pursuant to a request from the individual.

Dated: May 5, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

09-25-0151

SYSTEM NAME:

Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Management Survey and Review, Building 31, and Office of Extramural Research and Training, Building 1, National Institutes of Health (NIH), 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients or possible recipients of research funding who are subjects of investigations or determinations of misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of information related to investigations or determinations of misconduct.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the legislation which authorizes NIH to award grants and contracts for biomedical research and from NIH's concomitant responsibility to assure that funds disbursed for grants and contracts are spent for authorized purposes and that recipients of such funds conform to all appropriate laws and regulations. (Public Health Service Act, 42 U.S.C. 241, 242, 1, 275 et seq., 281 et seq.)

PURPOSE(S):

NIH maintains this system in order to make informed decisions on appropriate actions regarding awards of research funds to individuals who are or have been subjects of investigations or determinations of misconduct. The records may be used as follows:

1. The Associate Director for Extramural Research and Training, NIH, the Directors of bureaus, institutes or divisions of NIH, or the designees of these officials may use information from this system when considering whether it is appropriate to fund research by a subject individual.

2. These officials may disclose information, when appropriate, to members of the National Advisory Council or Board of the bureau, institute or division, when the Board or Council considers actual or proposed funding of research by such an individual.

3. Members of technical merit review groups may receive disclosures of factual information (a) if the disclosure bears directly on the scientific merit of an application or proposal under review, or (b) if disclosure is necessary to ensure an unbiased review when information concerning the conduct in question has been disclosed by other sources, such as coverage in the press.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision in the matter.

In the event the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosures may be made to the Department of Justice for the purpose of obtaining its advice.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

1. *Authorized Users:* Records are available only to the system manager or the Associate Director for Extramural Research and Training, NIH, to the Director of the bureau, institute or

division of NIH which has funded or is considering funding research by a subject individual, or to the designee(s) of these officials. These officials may disclose information to members of National Advisory Councils, Boards, or technical merit review groups only when such disclosure is relevant and necessary to review of research funding. Any disclosure to other individuals must be authorized by the system manager.

2. *Procedural Safeguards:* Access to records is strictly controlled by the system manager and the officials specified under "Authorized Users." Individuals who receive disclosures from this system are informed that the information is confidential. They are instructed to address all questions and inquiries either to the system manager, the Associate Director for Extramural Research and Training, NIH, or to the Director of the bureau, institute or division for reply.

3. *Physical Safeguards:* Records are kept in locked file cabinets in offices which are locked when not attended.

These measures follow the standards established in chapter 45-13 of the HHS General Administration Manual and supplementary chapter PHS hf: 45-13.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Management Survey and Review, National Institutes of Health, Building 31, Room 4C02, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address above; provide your full name and state that the inquiry concerns Privacy Act system of records number 09-25-0151.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a 5,000 dollar fine.

RECORD ACCESS PROCEDURES:

Write to the system manager at the address above and provide the same information as required for notification. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Write to the system manager and reasonably identify the record, specify the information being contested and

state the corrective action sought and the reasons for the correction.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from organizations responsible for investigations, from third parties who voluntarily submit unsolicited information, and from the media.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-12881 Filed 5-11-82; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah; Uinta-Southwestern Utah Regional Coal Leasing Notice of Regional Coal Team Meeting, Announcement of and Request for Comment on the Ranking Subfactors, Intent To Rank Tracts

AGENCY: Bureau of Land Management, Interior.

ACTION: Request for public comment on the ranking subfactors and the potential lease tracts and notice of Regional Coal Team meeting.

SUMMARY: This notice is to advise the public that the Regional Coal Team (RCT) for the Uinta-Southwestern Utah Federal Coal Production Region will meet to: (1) Review and discuss public comments on ranking of coal leasing tracts for Round II of leasing in the region; (2) review and discuss the tract profile data on these tracts; (3) rank the potential lease tracts; (4) select preliminary coal lease tracts; (5) select alternatives to be considered in preparation of a draft environmental impact statement for coal leasing in the Uinta-Southwestern Utah Coal Production Region; and (6) consider potential public body set-aside tracts.

Comments on the tracts and the factors that may be considered by the Regional Coal Team in the tract ranking process are requested. The proposed tract ranking subfactors are listed below.

DATES: Written comments on the tracts and ranking subfactors will be received by the Regional Coal Team Chairman until June 7, 1982. The Regional Coal Team will meet on June 10-11, 1982, starting at 9:00 a.m.

ADDRESSES: Comments on the potential lease tracts and the ranking factors should be addressed to Edward F. Spang, Chairman, Regional Coal Team, Nevada State Director, Bureau of Land

Management, Federal Building, 300 Booth Street, Reno, Nevada 89509.

The Regional Coal Team meeting will be in the Salt Palace, Room 127, 100 South West Temple, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Coal Project Manager, Uinta-Southwest Utah Region, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah, telephone (801) 524-5326.

SUPPLEMENTARY INFORMATION: The Regional Coal Team will meet on June 10 and 11, 1982, at 9:00 a.m. in the Salt Palace, Room 127, 100 South West Temple, Salt Lake City, Utah. The Regional Coal Team will discuss, rank, and select the coal lease tracts that will be considered for Round II of potential leasing in the Uinta-Southwestern Utah Coal Production Region. The potential lease tracts identified below have been delineated and will potentially be analyzed on a site-specific basis by the

meeting. The tracts on which adequate work is completed will be ranked and considered for possible leasing in December 1983 or later. All acreages and tonnages are preliminary and subject to change. The tract description identifies only the general location of the potential lease tracts. A preliminary legal description is available at the Bureau of Land Management Public Room, Utah State Office, University Club Building (14th floor), 136 East South Temple, Salt Lake City, Utah 84111.

The tracts that are being considered for ranking include:

Tract name	General location	Approximate acreage	Estimated in-place reserves (million tons)
Soldier Creek	14 mi. NE. of Price, UT, T. 12 and 13 S., R. 11 and 12 E.	2,168.02	82
Coal Creek	11 mi. NE. of Price, UT, T. 12 and 13 S., R. 11 E.	4,198.09	114.4
Graves	10 mi. generally north of Price, UT, T. 13 S., R. 10 E.	550.16	19.8
Hoffman Creek	10 mi. NE. of Price, UT, T. 13 S., R. 11 E.	120	1.9
Whitmore Park	15 mi. NE. of Price, UT, T. 12 S., R. 12 E.	160	6.3
Alkali Creek	12 mi. NE. of Price, UT, T. 13 S., R. 11 E.	2,098.30	33.8
Dugout-Pace	18 mi. NE. of Price, UT, T. 13 S., R. 12 and 13 E.	3,149.62	106.7
Boardinghouse Canyon	2 mi. NW. of Clear Creek, UT, T. 13 S., R. 7 E.	40	.9
Blue Trail Canyon	10 mi. S. of Emery, UT, T. 23 S., R. 6 E.	320	1
Emery North	3 mi. E. of Emery, UT, T. 22 S., R. 6 E.	2,001	44
Emery Central	6 mi. S. of Emery, UT, T. 22 and 23 S., R. 6 E.	2,967.65	42
Emery South	12 mi. S. of Emery, UT, T. 24 S., R. 6 E.	748.49	12.1
Walker Flat	7 mi. SW. of Emery, UT, T. 23 S., R. 5 E.	1,520.43	73.6
Ivie	15 mi. SW. of Emery, UT, T. 23 S., R. 4 E.	1,040	10.1
Skumpah	18 mi. E. of Salina, UT, T. 22 S., R. 3 E.	639.80	4.5
Acord	20 mi. E. of Salina, UT, T. 22 S., R. 4 E.	120	3.35
Muddy Area (multiple tracts)	5 mi. NW. of Emery, UT, T. 21 and 22 S., R. 4-6 E.	19,000	440
North Horn II	10 mi. W. of Orangeville, UT, T. 18 S., R. 6 E.	6,500	65
South Horn Mountain	12 mi. W. of Castle Dale, UT, T. 19 S., R. 6 and 7 E.	12,000	140
Trail Mtn.	10 mi. NE. of Orangeville, UT, T. 17 and 18 S., R. 6 and 7 E.	9,000	90
Ferron Canyon	13 mi. NW. of Ferron, UT, T. 18 and 19 S., R. 5 E.	8,500	95
Candland Mtn.	23 mi. W. of Price, UT, T. 14 and 15 S., R. 6 E.	1,800	60
Castle Valley Ridge	16 mi. SW. of Price, UT, T. 14 and 15 S., R. 7 E.	3,442	73
North Trough Springs	3 mi. SW. of Clear Creek, UT, T. 14 S., R. 6 and 7 E.	3,195	30
Mud Creek	3 mi. S. of Clear Creek, UT, T. 14 S., R. 7 E.	1,200	27
Alton Amphitheater	N. and E. of Alton, UT, T. 39 S., R. 5 and 6 W.	2,781.15	74.8
Flax Lakes	NE. of Glendale, UT, T. 39 and 40 S., R. 6 W.	5,469.85	112.7
Ford Pasture	11 mi. E. of Glendale, UT, T. 40 S., R. 5 W.	1,560	39.4
Fisher Canyon	6 mi. SE. of Alton, UT, T. 39 and 40 S., R. 5 W.	5,724.91	134
Mill Creek Canyon	10 mi. SE. of Alton, UT, T. 39 and 40 S., R. 4½ and 5 W.	6,562.48	204
Cedaredge	6 mi. W. of Cedaredge, CO, T. 13 S., R. 10 W.	1,847.20	46.42
Paonia	4 mi. NW. of Paonia, CO, T. 13 S., R. 6 and 7 W.	4,653.34	149.80
Gooseberry	9 mi. E. of Fairview, UT, T. 13 S., R. 6 E.	920	43.3

The Regional Coal Team will rank the available tracts on the basis of high, medium, and low desirability for leasing, utilizing the subfactors indicated below and any additional identified at the RCT meeting. The subfactors are:

1. *Coal economics:* production rate, estimated mine life, total coal reserves, recoverable reserves, coal quality (sulfur content and BTU value), surface ownership, type of mine (surface versus underground), coal transportation needs, and coal access;

2. *Impacts on the natural environment:* air quality, soils hydrology, surface and underground

water resources, vegetation, endangered and threatened species, reclamation potential, wildlife, cultural and historical values, recreation values, visual resources, and noise;

3. *Socio-economic impact:* effect on local population, infrastructure, social services, public safety, culture and well being, and agriculture; and,

4. *Unsuitability criteria:* rights-of-ways and easements; land use for scientific studies, historic lands and sites, Federally listed endangered and threatened species, eagle nests, state resident fish and wildlife, floodplains, and municipal watersheds.

Upon completion of the ranking process, the Regional Coal Team will

select tracts and alternatives that will be considered in the EIS for possible Federal lease sale beginning in December 1983 in the Uinta-Southwestern Utah Coal Region. Tracts will be selected and considered in alternatives to meet or exceed the Federal coal leasing target for the region that will be decided by the Secretary of the Interior. Generally, the tracts selected for possible competitive sale will be chosen from those tracts that are in a high desirability range, followed by those that are in the medium desirability range. Tracts in the low desirability range will be the tracts least likely to be selected. However, special conditions or factors may exist that would warrant

the selection of a tract that falls in the medium or low desirability range.

Material concerning the potential lease tracts will be available for public review at the Bureau of Land Management's Utah State Office Public Room (Room 1400), University Club Building, 136 East South Temple, Salt Lake City, Utah.

Dated: May 5, 1982.

Dean E. Stepanek,
Associate State Director.

[FR Doc. 82-12883 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I) and the Office of Management and Budget's Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 9:00 a.m. to 4:00 p.m. on May 27, 1982, and from 8:00 a.m. to 4:00 p.m. (or completion of business) on May 28, 1982, in Room 1042, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C.

The meeting will deal with the following subjects:

1. Welcome of New Committee Members
2. Review of Minutes of Meeting of January 21 and 22, 1982
3. Current Status of Program
4. Review of Recommendations for Centers of Generic Mineral Technology
5. New Business

The meeting of this committee is open to the public. Approximately 25 visitors can be accommodated on a first come first served basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should make this known no later than May 21, 1982, to Dr. Ronald Munson, Acting Chief, Office of Mineral Institutes, Bureau of Mines, Room 1030A, Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 21241, phone (202) 634-1332.

James F. McAvoy,
Deputy Director.

[FR Doc. 82-12838 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Contract Negotiations with the East and Quincy Columbia Basin Irrigation Districts; Availability of the Proposed Supplement No. 1 to Master Water Service Contract and the Proposed Two-Party Interruptible Water Service Contract for Public Review and Comment

The Department of the Interior, through the Bureau of Reclamation, is in the final stages of negotiating a supplement to the Master Water Service Contract and an interruptible water service contract form with the East Columbia Basin Irrigation District of Othello, Washington and Quincy Columbia Basin Irrigation District of Quincy, Washington. The proposed contracts will provide for limited non-Federal development of irrigable lands from existing facilities within each district pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), as amended, the Columbia Basin Project Act (57 Stat. 14), the Master Water Service Contract, and the repayment contract presently in effect with each district.

The development of irrigable lands under the proposed supplement will not exceed 10,000 acres in each district. Areas with potential for development under this program have been reviewed and analyzed to determine impacts from irrigation development. Only lands irrigable under Bureau of Reclamation land classification criteria, with insignificant drainage impacts on existing project lands and facilities, will be eligible to receive water.

Land available for irrigation development in the Quincy Columbia Basin Irrigation District consists of privately owned irrigable land from deferred and bypassed lands in Planning Blocks 90, 91, 742, 791, 821, 831, 891, and north of 80. In the East Columbia Basin Irrigation District, eligible lands lie in a band immediately east of the East Low Canal.

Water would be made available to individual landowners on an interruptible basis under terms of a two-party water service contract between a district and a water user. The contract would specify water quantities, charges, and other terms and conditions in compliance with Reclamation law and policy. The landowners would be responsible for construction of distribution and drainage facilities. The Federal Government would not be responsible for drainage of lands irrigated under the two-party contracts. The terms and conditions of the

proposed contracts are ultimately dependent upon the Secretary of Interior's approval of the contract forms.

The proposed draft contracts are now available for public review. Written comments from the public will be received until May 31, 1982. All written correspondence concerning the proposed contracts will be made available to the public pursuant to the terms and conditions of the Freedom of Information Act (80 Stat. 383), as amended. Requests for copies of the contracts and written comments on the contracts should be addressed to the Project Manager, Bureau of Reclamation, Division Avenue and C Streets, NW., P.O. Box 815, Ephrata, Washington 98823.

A public meeting will be announced in the local news media to allow the public an opportunity to be briefed and to comment on the proposed contracts and environmental assessment of the program.

For further information, please contact Ms. Carol Prochaska, Public Affairs Officer, at the above address or telephone (509) 754-4611, Ext. 258.

Dated: May 7, 1982.

Eugene Hinds,
Assistant Commissioner of Reclamation.

[FR Doc. 82-12890 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Kerr-McGee Corporation, Unit Operator of the Ship Shoal Block 28 Federal Unit Agreement No. 14-08-001-2942, submitted on April 28, 1982, a proposed supplemental plan of exploration describing the activities it proposes to conduct on the Ship Shoal Block 28 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 Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT:

Minerals Management Service, 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 Minerals Management Service 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: May 4, 1982.

Lowell G. Hammons,

Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-12884 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-31-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications; Decision-Notice

Correction

In FR. Doc. 82-8901, published at page 14231, on Friday, April 2, 1982, on page 14232, in the second column, in the first paragraph, "MC-FC-79652", in the twelfth line "points in and Nye" should be corrected to read "points in Clark and Nye".

BILLING CODE 1505-01-M

Motor Carriers; Finance Applications; Decision Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's rules of practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date

of notice of filing of the application is published in the Federal Register.

Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. 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, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying application shall stand denied.

Dated: May 6, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce and Dowell.

MC-F-14839, filed April 12, 1982. D & F TRANSIT, INC. (D & F) (192 E. Main Street, Fredonia, NY 14063)—**PURCHASE (PORTION)—**GREYHOUND LINES, INC. (Greyhound) (Greyhound Tower, Phoenix, AZ 85077). Representatives: Donald C. Brandt, 2 W. Main Street, Fredonia, NY 14063 and Anthony P. Carr, Greyhound Tower, Phoenix, AZ 85077. D & F seeks authority to purchase a portion of the interstate operating rights of Greyhound. John L. Swanson, sole stockholder of D & F, seeks authority to control said operating rights. The operating rights to be purchased are contained in Certificate No. MC-1501 (Sub-No. 121) (renumbered MC-1515 (Sub-No. 8) but not yet reissued) and MC-1515 (Sub-No. 261). D & F is purchasing a portion of a route between Fairmount, NY, and Buffalo, NY, in MC-1501 (Sub-No. 121) which authorizes the transportation as a motor common carrier, over regular routes, of passengers and their baggage, express and news papers in the same vehicle with passengers, between Rochester, NY, and Buffalo, NY, serving all intermediate points; from Rochester over NY Hwy 31 via Medina, Gasport and Lockport, NY, to junction U.S. Hwy 78 to Millersport, NY, then over NY Hwy 263 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Buffalo, NY, and return over the same route. Greyhound will retain authority to transport passengers and their baggage, express and newspapers in the same vehicle with passengers, between Fairmont, NY, and Buffalo, NY, serving all intermediate points except Rochester, Gasport, from Fairmount over unnumbered hwy via Amboy and Ionia Corners, NY, to Jordan, NY, then over NY Hwy 31 to junction NY Hwy 250, then over NY Hwy 250 to Fairport, NY, then over NY Hwy 31F to junction NY Hwy 31, then over NY Hwy 31 via Lockport, NY to junction NY Hwy 320, then over NY Hwy 320 to junction U.S. Hwy 62, and then over U.S. 62 to Buffalo. D & F is purchasing that portion of Certificate No. MC-1515 (Sub-No. 261F) authorizing the transportation of passengers, baggers, express and newspapers and the junction of NY Hwy 78 and NY Hwy 5, over NY Hwy 78. Greyhound will retain authority (1) between Buffalo, NY, and junction NY Hwy 78 and NY Hwy 5; from Buffalo over NY Hwy 33 to junction Genesee St., then over Genesee St. to junction NY Hwy 78, then over NY Hwy 78 to junction NY Hwy 5, and return over the same route, serving all intermediate points, and (2) between Millersport, NY, and junction NY Hwy

78 and NY Hwy 324, over NY Hwy 78, serving all intermediate points. D & F is a motor carrier of passengers and their baggage pursuant to certificates issued in MC-116068 and sub-numbers thereunder.

Note.—D & F filed an application in conjunction with MC-F-14839. The application was docketed No. MC-116068 (Sub-No. 7) published in the same Federal Register.

MC-F-14842, filed April 15, 1982. SHELTON TRUCKING SERVICE, INC. (Shelton) (Route 1, Box 230, Altha, FL)—MERGER—ARGO TRUCKING COMPANY, INC. (Argo) (Louer Heard Street, Elberton, GA 30635). Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Shelton seeks authority to merge the Interstate operating rights and property of Argo into Shelton for ownership, management and operation. Randall Shelton, the sole stockholder of Shelton, seeks authority to continue in control of the merged rights and property through this transaction. Randall Shelton controls Seminole Truck Lines, Inc., a non-carrier, which, in turn, controls Argo. Common control was approved in MC-F-14272. Shelton is a motor carrier operating under MC-124887. Argo's authority consisting of Certificate Nos. MC-110878 (Sub-Nos. 27, 39, 48, 49, and 50X), authorizes the transportation of (1) clay, glass, concrete or stone products, (2) building materials, (3) machinery, (4) ores and minerals, (5) food and related products, (6) chemicals and related products, (7) metal products, (8) pulp, paper, and related products, (9) iron and steel scrap, and (10) granite and marble, between specified points throughout the U.S.

MC-F-14845, filed April 20, 1982. GOLD STAR, INC. (Gold Star) (130 Davidson Avenue, Somerset, NJ 08873)—PURCHASE (PORTION)—GROSS & HECHT TRUCKING, INC. (Gross & Hecht) (35 Brunswick Avenue, Edison, NJ 08817). Representative: A. David Millner, P.O. Box Y, 7 Becker Farm Road, Roseland, NJ 07068. Gold Star seeks authority to purchase a portion of the interstate operating rights of Gross & Hecht. Arthur M. Goldberg, the majority stockholder of Gold Star, seeks authority to continue in control of said rights through this transaction. Mr. Goldberg controls Transco Group, Inc., a non-carrier which controls the transferor, Gross & Hecht. He also controls East Alpine Corp., a non-carrier which controls Mountainside Transport, Inc., a motor contract carrier operating under MC-13287 and sub-numbers thereunder. Gold Star holds authority under MC-148560, to operate as a

contract carrier. Common control of Mountainside and Gross & Hecht was approved in MC-F-12833. Common control of Gold Star with the other two carriers is pending in MC-F-14810. Gold Star is seeking authority to purchase that portion of Permit No. MC-59806 (Sub-No. 24)X which authorizes the transportation of *flavoring syrup*, in bulk, in tank vehicles, from Long Island City, NY, to Newark, New Brunswick, Teterboro and Asbury Park, NJ, and Philadelphia, PA, under continuing contract(s) with unnamed shippers.

MC-F-14846, filed April 22, 1982. TRI-LINE EXPRESSWAYS, LTD. (Tri-Line) (9559 40th Street, SE, Calgary, Alberta, Canada T2H 2J1)—purchase—LESTER SMITH TRUCKING, INC. (Lester) (8035 East 56th St., Commerce City, CO 80022) and —purchase (portion)—MITCHELL BROS. TRUCK LINES (Mitchell) (3841 No. Columbia Blvd., Portland, OR 97217). Representatives: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264 and David Lister, P.O. Box 17039, Portland, OR 97217. Tri-Line seeks to purchase the operating rights and property of Lester and a portion of the operating rights of Mitchell. James W. Cooper, Lloyd W. Cooper, Alexander D. Smith, Robert V. McCormack, and Gordon W. Hawley, who together control 65.97% of Tri-Line through stock ownership, seek authority to acquire control of the operating rights and property through this transaction. The operating rights sought to be transferred from Lester are contained in certificate No. MC-57697 and sub-numbers thereunder, which authorize the transportation of *general and specified commodities such as farm products, building and construction materials, machinery, transportation equipment, food and related products, metal products, size and weight commodities, self-propelled construction articles, pipe, household goods, mercer commodities rubber and plastic products, lumber and wood products, clay, concrete, glass or stone products, ores and minerals chemicals and related products, instruments and photographic goods, furniture and fixtures, telephone and powerline materials, coal and coal products and prefabricated buildings*, between various points in AL, AR, AZ, CA, CO, IA, ID, IL, IN, KY, KS, LA, MI, MN, MO, MT, NE, ND, NM, NV, OK, OR, PA, SD, TN, TX, UT, WA, WI, and WY. The operating rights sought to be transferred from Mitchell are the following: the entire certificates are being transferred in MC-32882 (Sub-Nos. 62, 63, 71, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17,

E18, E19, E20, E21, E22, E23, E24, E25), and only a portion of the operating rights are being transferred from certificate No. MC-32882 and (Sub-Nos. 61, 65, 68, 70, 72, 74, 84, 94, 199, 107, 108, 124, 151, 154, 155, 156X, 157X, 158X, 159X, 160X, 161X, 162X, 163X, 164X, 165X, 166X, 167X, 168X, and E1). These certificates authorize the transportation of *general and specified commodities such as forest products, wood products, lumber and lumber products, paper and paper products, pipe, iron and steel articles, commodities which by reason size or weight require special handling or the use of special equipment, commodities which do not require special handling or the use of special equipment when moving in the same shipment on the same bill of lading as commodities which by reason of size or weight require special handling or the use of special equipment, self-propelled articles, weighing 15,000 pounds or more, iron or steel articles, pipe and pipe fittings, construction material, engineered kiln stickers, blades, edges and accessories therefor; signs, and materials, equipment and supplies used in the manufacture and erection of signs, fireplace logs, lift trucks and hydraulic platforms, iron and steel scaffolding, metal products, rubber and plastic products, empty containers, machinery and building materials, clay, concrete, glass or stone products, ores and minerals and coal and coal products, transportation equipment, such commodities as are dealt in or used by machinery, logging and logging equipment distributors, materials, equipment and supplies used in the construction, manufacturing and erection of pollution control and environment control commodities, and such commodities as are dealt in or used by dealers and manufactures of agricultural equipment, and lawn care and leisure products*, between points in the United States (including AK, excluding HI).

Notes.—(1) An application for temporary authority has been filed.

(2) A directly related gateway elimination application has been filed, MC-129480 Sub-No. 55), published in the same Federal Register.

Tri-Line is a motor common carrier pursuant to certificates issued in MC-129480 and sub-number thereunder.

MC-F-14847, filed April 26, 1982. CARAVAN MOTOR CARGO, INC. (Caravan) (605 S. Loop 12, Irving, TX 75060)—purchase (portion)—TRANS-CONTINENTAL EXPRESS, INC. (Trans-Continental) (Highway 82 East, Clarksville, TX 75426). Representative: Ralph W. Pulley, Jr., 102 Metropolitan

Savings Tower, 5944 Luther Lane, Dallas, TX 75225. Caravan seeks authority to purchase a portion of the interstate operating rights of Trans-Continental. James T. Moore, the majority stockholder of Caravan, seeks authority to acquire control of said rights through the transaction. Caravan is purchasing all of the authority held by Trans-Continental in MC 150425 (Sub-Nos. 1, 2, 3, 4, and 5), which authorize the transportation of (1) *zinc dust, dross and skimmings*, between the facilities of Southern Zinc Company, in Fulton County, GA, on the one hand, and, on the other, points in AL, MS, LA, TX, OK, AR, MO, TN, OH, NC, SC, VA, PA, NJ, FL, and RI; (2) *paper, paper products, and plastic articles, and materials and supplies* used in the manufacture and distribution of said commodities, between those points in the U.S. in and east of WI, IA, MO, KS, OK, and TX; (3) *cleaning compounds, textile softeners, foodstuffs, and toilet preparations*, between the facilities of Lever Brothers Co., at or near St. Louis, MO, on the one hand, and, on the other, points in TX, LA, MS, GA, TN, AR, NC, NY, NJ, MI, OH, and CA; (4) (a) *malt beverages and materials, supplies and equipment* used in the production and distribution of malt beverages, between Fort Worth, TX, New Orleans, LA, and Belleville, IL, on the one hand, and, on the other, points in AR and LA; (b) *alcoholic beverages and materials, supplies and equipment* used in the production and distribution of alcoholic beverages, between Chicago, IL, and Westfield, NY, on the one hand, and, on the other, points in Mobile County, AL; and (c) *alcoholic liquors, materials, supplies and equipment* used in the manufacture, distribution, and sale of alcoholic liquors (i) between points in IL, on the one hand, and, on the other, those points in the U.S. in and west of WI, IN, KY, AR, and LA, (ii) between Ft. Smith, AR, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, IA, and IL, and (iii) between New Orleans, LA, on the one hand, and, on the other, points in IL, MO, AR, TN, TX, OK, MS, AL, GA, and FL; and (5) *such commodities as are dealt in by the agricultural, water treatment, food processing, wholesale grocery and institutional supply industries*, between Iberia Parish, LA, and points in Van Zandt County, TX, on the one hand, and, on the other, points in AR, OK, TX, MO, LA, MS, AL, GA, SC, NC, TN, KY, and OH. NOTES: TA has been filed. Transferee is not a carrier but is the sole stockholder of Caravan Refrigerated Cargo, Inc., a motor carrier operating

under MC 119789 and sub-numbers thereunder.

MC-F-14843, filed April 15, 1982. SUNDERMAN TRANSFER, INC. (Sunderman) (Box 63, Windom, MN 56101)—purchase (portion)—T.F.S., Inc. (T.F.S.) (So. Highway 281, RR #2, Box 126, Grand Island, NE 68801). Representative: Carl E. Munson, 469 Fischer Bldg., P.O. Box 796, Dubuque, IA 52001. Sunderman seeks to purchase a portion of the operating rights of T.F.S. in Certificate No. MC 145743 (Sub. 28) which authorizes the transportation of (1) glassware (a) from Columbus, OH, to points in AR, FL, LA (except New Orleans commercial zone); and (b) from Jeanette, PA, to points in AL, AR, AZ, CA, CO, FL, GA, ID, KS, LA, MS, MO, MT, OK, NV, NM, ND, OR, SD, TX, UT, WA, and WY; (2) plasticware, from Lake City and Girard, PA, to points in AL, AZ, CA, CO, FL, GA, ID, KS, MO, MS, MT, ND, NV, NM, OK, OR, SD, TX, UT, WA, and WY; and (3) chinaware and stoneware, from Sebring and Bedford Heights, OH, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY; and (4) chinaware, porcelain ware, and stoneware, from Sebring and Bedford Heights, OH, to points in AL, GA, MS, OK, TX, KS, MO, ND, SD, and FL. Sunderman is a carrier pursuant to authority issued in MC 145842 (Common) and MC 125103 (Contract). Eugene Sunderman, who controls transferee through stock ownership, seeks to acquire control of said operating rights through the purchase. No TA application has been filed.

Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be

construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment of applicant of \$10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: May 6, 1982.

By the Commission, Review Board Number 3, Member Krock, Joyce and Dowell.

MC 129480 (Sub-55), filed April 22, 1982. Applicant: TRI-LINE EXPRESSWAYS, LTD.—Gateway Elimination, 9559 40th Street SE., Calgary, Alberta, Canada T2H 2J1. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. To operate as a common carrier, over irregular routes, transporting (1) commodities which because of size or weight require the use of special equipment and metal products, between points in AR, LA, OK, and TX, on the one hand, and, on the other points in WA, OR, ID, UT, MT, NV, AZ and NM, (2) machinery, between points in OR, WA, CA, ID, NV, AZ, MT, WY, UT, NM and CO, on the one hand, and on the other, those points in the United States in and east of MI, OH, KY, TN and MS, (3) ores, minerals and coal, and coal products, between points, in MT, WY, ND, and SD, on the one hand, and, on the other, points in the United States, and (4) metal products, (a) between those points in the United States in, west and north of WI, IL, IN, MO, KS, CO and NM, on the one hand, and, on the other, those points in the United States in and east of MI, OH, KY, TN, and MS, and (b) between points in TX, OK, AR and LA, on the one hand, and, on the other, points in ND, SD, NE, KS, NM, IA, MO, WI, IL, and IN.

Note.—The purpose of this application is to eliminate various gateways to enable Tri-Line Expressways, Ltd. to provide a through service. This application is directly related to MC-F-14846 published in this same Federal Register issue.

MC 116068 (Sub-7), filed April 12, 1982. Applicant: D & F TRANSIT, INC., 192 E. Main Street, Fredonia, NY 14063. Representative: Donald C. Brandt, 2 W. Main Street, Fredonia, NY 14063. To operate as a common carrier, by motor vehicle, over regular routes, transporting passengers and their baggage, in the same vehicle with passengers, between the junction of NY Hwy 78 and NY Hwy 5 and Buffalo, NY, serving all intermediate points; from Junction NY Hwy 78 and NY Hwy 5 over NY Hwy 78 to junction Genesee Street, then over Genesee Street to junction of NY Hwy 33 to Buffalo, NY, and return over the same route. Condition: We find this application not to be directly related MC-F-14839 and therefore require a \$350 filing fee to be filed prior to the issuance of an Effective Notice.

Note.—This application was filed in

conjunction with MC-F-14839, published in this same Federal Register.

Agatha L. Mergenovich,
Secretary.

FR Doc. 82-12842 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 254]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: May 7, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC-157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority*.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 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 Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,
Secretary.

MC 14125 (Sub-13)X, filed April 29, 1982. Applicant: PIQUA TRANSFER & STORAGE COMPANY, 524 Young St., Piqua, OH 45356. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. Sub-No. 12F certificate: remove the household goods restriction from its general commodities authority.

MC 56799 (Sub-10)X, filed April 26, 1982. Applicant: CLAXON TRUCK LINE, INC., P.O. Box 678, Frankfort, KY 40602. Representative: George M. Catlett, Suite 700-702, McClure Bldg., Frankfort, KY 40601. Subs 2, 3F, 7F, and 8F: (1) allow service at all intermediate points, Subs 2, 3F, and 7F, and (2) remove the facilities limitations and the originating at and destined to restriction, Sub 8F.

MC 78842 (Sub-6)X, filed April 30, 1982. Applicant: DALEY & WANZER, INC., 821 Nantasket Avenue, Hull, MA 02045. Representative: Thomas R. Kingsley, 10614 Amherst Avenue, Silver Spring, MD 20902. Lead and Subs 1, 2 and 3 certificates and MC-127272 and Sub 1 permits: (1) broaden commodity description (a) in lead certificate to "general commodities (except classes A and B explosives and commodities in bulk)" from general commodities with the usual exceptions, (b) in lead and Subs 1, 2 and 3 certificates to "household goods, furniture and fixtures, and materials, equipment and supplies used in the manufacture, sale and distribution of furniture and fixtures," from household goods, and (c) in lead and Sub 1 permit to "such commodities as are dealt in or used by department stores," from "damaged retail department store merchandise, when moving loose or uncrated"; and, (2) expand territorial descriptions (a) in lead certificate to Plymouth County, MA, from off-route point of Hull, MA, and to Norfolk, Middlesex, Plymouth and Suffolk Counties, MA, from Hull and Brookline, MA, (b) in Sub 1 certificate to Norfolk, Plymouth and Suffolk Counties, MA, from Quincy, MA, (c) in Sub 2 certificate to Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester Counties, MA, from Boston, MA, and (d) in lead and Sub 1 permits to between points in the United States under continuing contract(s), with a named shipper.

MC 88380 (Sub-44)X, filed April 26, 1982. Applicant: REB TRANSPORTATION, INC., P.O. Box 4309, Fort Worth, TX 76106. Representative: Clint Odham, 623 South

Henderson, Fort Worth, TX 76104. Lead, and Sub-Nos. 11, 15, 19, 20, 24, 25, 27, 28, 29, 31F, 32F, 33F, 34F and 35F broaden, (1) bituminized fiber pipe, Subs 11 and 29 to "pipe"; iron and steel articles scrap iron and scrap steel, Sub 15, iron and steel articles Subs 19, 20, 24, 25, 27, 31, 34 and 35; aluminum articles, iron and steel tanks, aluminum tanks and parts and attachments and accessories, Sub 19, iron, steel, zinc, lead and articles or products thereof (except in bulk), and springs, Sub 28 to "metal products", (2) Lead, remove (a) exception to pipe used in connection with the stringing or dismantling of main or truck pipelines (b) restriction against interchange at points in KS and OK, and (c) restriction against tacking authority for purpose of performing a through service, (3) remove "originating at destined to" restrictions, facilities limitation, except in bulk, foreign commerce, and in tank vehicles restriction in various subs, (4) Sub 20, remove restrictions against (a) commodities which because of size or weight require special equipment, (b) Mercer commodities, (c) commodities used in, or in connection with the drilling of water wells and sulphur industry, (d) commodities used in, or in connection with earth drilling and (e) scrap metals, (5) remove "in bulk" restriction from construction materials authority in Sub 28, (6) Sherman, TX to Grayson County; Hope, AR to Hempstead County; Midlothian, TX to Ellis County; Plum, TX to Fayette County and (7) to radial authority.

MC 119399 (Sub-154)X, filed April 23, 1982. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, Joplin, MO 64802. Representative: Keith R. McCay, (same as applicant). Subs 97F, 117F, 134F, 149X, and 141F: (1) Broaden commodity description from (a) petroleum, petroleum products, vehicle body sealer, sound deadener compound, and filters to "petroleum, natural gas and their products" in Sub 97F; (b) empty drums used in the transportation of petroleum products to "containers" in Sub 117F; and (c) lighting fixtures and parts and accessories for lighting fixtures to "machinery and materials, equipment, and supplies used in the manufacture and distribution of machinery" in Sub 134F; (2) remove facility limitations in Subs 117F and 134F; (3) remove facility interlining restriction and change territory to between named facilities at points in the US (except AK and HI); on the one hand, and, on the other, points in the US (except AK and HI) in Sub 141F; (4) change Dayton to Liberty County, TX in Sub 117F, and Carthage to Jasper County, MO in Sub 134F; and (5) change

one-way to radial authority in Subs 97F, 117F and 134F.

MC 143870 (Sub-2)X, filed April 27, 1982. Applicant: BRANTLEY BROTHERS MOVING & STORAGE CO., INC., 17 Frelinghuysen Avenue, Newark, NJ 07114. Representative: Malachia Brantley (same as applicant). Lead certificate: (1) Broaden commodity description from household goods to "household goods, furniture and fixtures, materials, equipment and supplies used in the manufacture, distribution, and sales of furniture and fixtures"; and (2) remove the restrictions to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and against pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization.

MC 144977 (Sub-3)X, filed May 3, 1982. Applicant: SERVICE TRUCKING COMPANY, INC., P.O. Box 368, Charleston, TN 37310. Representative: Clayton R. Byrd, 2870 Briarglen Drive, Doraville, GA 30340. Sub-No. 2F, (1) general commodities (with the usual exceptions) to "general commodities (except classes A and B explosives, household goods and commodities in bulk)"; (2) delete the plantsite restriction; (3) broaden to county-wide authority in Bradley and Hamilton Counties, TN; from Charleston and Chattanooga, TN; (4) remove originating at and/or destined to restriction.

MC 151027 (Sub-3)X, filed May 3, 1982. Applicant: GRADY J. MITCHELL, d.b.a. MITCHELL TRUCKING COMPANY, P.O. Box 618, Dobson, NC 27017. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave., N.W., Washington, D.C. 20005. Sub 2 certificate: remove the "originating at or destined to facilities of a shipping association and its members" restriction in general commodity authority radially between Ohio and points in the United States.

[FR Doc. 82-12844 Filed 5-11-82; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the *Federal Register* on December 31, 1980, at 45 FR 86771. 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 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP4-161

Decided: May 5, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161838 (Sub-1), filed April 29, 1982. Applicant: DOUGLAS C. ROYCRAFT, d.b.a. ROYCRAFT TRANSIT & STORAGE, 1800 Vernon St., Eau Claire, WI 54710. Representative: Robert S. Lee, 1600 TCF Tower, 121 S 8th St., Minneapolis, MN 55402. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161657, filed April 26, 1982. Applicant: FRED L. ROBINSON and RICHARD W. ROBINSON, d.b.a. ROBINSON EXPRESS, 5851 Thori Croft Dr., Valley Springs, CA 95252. Representative: Arden Riess, P.O. Box 7965, Stockton, CA 95207, (209) 957-6128. 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. (except AK and HI).

MC 161677, filed April 26, 1982. Applicant: BOB OLDHAM TRUCKING, 60 Stephanie St., #102C, Salinas, CA 93901. Representative: Robert F. Oldham (same address as applicant), (408) 422-0282. Transporting *food and such 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. (except AK and HI).

MC 161727, filed April 28, 1982. Applicant: MEDICAL DELIVERY SERVICE, INC., 441 Carnation Ave., Floral Park, NY 11001. Representative: Daniel C. Sullivan, 180 N. Michigan Ave., Suite 1700, Chicago, IL 60601; (312) 263-1800. 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. (except AK and HI).

MC 161737, filed April 28, 1982. Applicant: Q.D.S. MESSENGER SERVICE, Division of MARLA ENTERPRISES, INC., 2 Ogden Ave., Harrison, NJ 07029. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. 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. (except AK and HI).

Volume No. OP4-164

Decided: May 6, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 161777, filed April 30, 1982. Applicant: MARVIN KELLER TRUCKING, 315 South St. John, Bethany, IL 61914. Representative: Marvin Keller, (same address as applicant), (217) 665-3430. 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 161588, filed April 20, 1982. Applicant: UNITED FREIGHT LINES, INC., 1215 Bixby Ave., City of Industry, CA 91745. Representative: Frederick J. Coffman, P.O. Box 1455, Upland, CA 91786, 714-981-9981. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 161639, filed April 23, 1982. Applicant: RAMONA B. KLINNER, d.b.a. SHELBY PROPERTY BROKERS, P.O. Box 1409, Shelby, AL 35143. Representative: John R. Frawley, Jr., Suite 200, 120 Summit Pkwy., Birmingham, AL 35209-4786, 205-942-9116. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

Agatha L. Mergenovich, Secretary.

[FR Doc. 82-12845 Filed 5-11-82; 9:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the Federal Register of December 31, 1980, at 45 FR 86771. 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 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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 opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in

interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP4-163

Decided: May 6, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 65697 (Sub-63), filed April 29, 1982. Applicant: TSC EXPRESS CO., P.O. Box 1695, Atlanta, GA 30301. Representative: Paul W. Smith (same address as applicant), (404) 521-0730. Transporting *cleaning compounds, food preparations, and printed matter*, between points in Fulton County, GA, on the one hand, and, on the other, points in AL, MS and TN.

MC 144197 (Sub-4), filed April 26, 1982. Applicant: KEYBOARD CARRIAGE, INC., 1212 Lexington Drive, New Albany, IN 47150. Representative: John Robert Ellnor III (same address as applicant), (812) 944-5037. Transporting *general commodities* (except classes A and B explosives and commodities in bulk) between points in the U.S. (except AK and HI).

MC 144197 (Sub-4), filed April 26, 1982. Applicant: KEYBOARD CARRIAGE, INC., 1212 Lexington Drive, New Albany, IN 47150. Representative: John Robert Ellnor III (same address as applicant), (812) 944-5037. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), in specialized equipment, between points in the U.S. (except AK and HI).

MC 145987 (Sub-3), filed April 29, 1982. Applicant: INTER-CITY EXPRESS, LTD., 2655 Dollarton Bwy., N. Vancouver, B.C. Canada V7H 1B1. Representative: Jim Pitzer, 15 S. Grady Way, suite 321, Renton, WA 98055-3273, (206) 235-1111. Transporting *chemicals and related products* between ports of entry on the International Boundary line between the U.S. and Canada and points in the U.S. (except AK and HI).

MC 148947 (Sub-4), filed April 29, 1982. Applicant: HUNTER TRANSPORT CO., INC., 1603 Long St., Chattanooga, TN 37408. Representative: Ann K. Merriman (same address as applicant), (615) 265-8494. Transporting *paper, pulp and cotton linters*, between Chattanooga, TN, on the one hand, and, on the other, points in AR, CT, LA, MA, MI, MS, NH, NJ, NY, OH, PA, VA, WI, and WV, under continuing contract(s) with Southern Cellulose Division of Knowlton Brothers, of Chattanooga, TN.

MC 150687 (Sub-3), filed April 30, 1982. Applicant: MITCHELL & SONS MOVING AND STORAGE, INC., 755 N. Baney Rd., Ashland, OH 44805. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889-2531. Transporting *household goods, furniture, fixtures and electronic equipment*, between points in the U.S. (except AK and HI).

MC 152517 (Sub-2), filed April 29, 1982. Applicant: RO-MAR TERMINAL & WAREHOUSE CO., INC., 3356 So. Ashland Ave., Chicago, IL 60608. Representative: Ronald N. Cobert, 1730 M St., NW., Suite 501, Washington, D.C. 20036, (202) 296-2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Freight Train, Inc., of Chicago, IL.

MC 160347 (Sub-1), filed April 29, 1982. Applicant: TRUCK LOAD SERVICE, INC., 1313 Hooksett Ave., Hooksett, NH 03106. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, (207) 773-5651. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ME and NH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161757, filed April 30, 1982. Applicant: BEALL CONCRETE, INC., Box 591, Roanoke, TX 76262. Representative: Wilburn L. Williamson, Suite 107, 50 Classen Center, 5101 N. Classen Blvd., Oklahoma City, OK 73118, (405) 848-7946. Transporting *commodities* in bulk, between points in AR, OK, and TX.

Volume No. OP4-165

Decided: May 6, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Fisher not participating.)

MC 61396 (Sub-401), filed April 29, 1982. Applicant: HERMAN BROS., INC., P.O. Box 189, Omaha, NE 68101. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475-6761. Transporting *cement*, between points in Forsyth and Durham Counties, NC, on the one hand, and, on the other, points in VA, TN, and WV.

MC 99676 (Sub-3), filed April 29, 1982. Applicant: F. KIRCHNER & SON CO., INC., 421 Industrial Dr., P.O. Box 325, Harrison, OH 45030. Representative: Norbert B. Flick, 2250 Beechmont Ave., P.O. Box 30-L, Cincinnati, OH 45230, (513) 231-4831. Transporting *machinery and machinery parts, and iron and steel articles*, between Cincinnati, OH, on the

one hand, and, on the other, points in IL, IN, and MI.

MC 102616 (Sub-1036), filed April 29, 1982. Applicant: COASTAL TANK LINES, INC., 250 Cleveland Massillon Rd., Akron, OH 44319. Representative: Fred H. Daly, 2550 M St., N.W., Suite 475, Washington, DC 20037, (202) 293-3204. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK), under continuing contract(s) with Standard Oil Company (Ohio), of Cleveland, OH.

ME 139326 (Sub-2), filed April 29, 1982. Applicant: W.A. WAGNER, INC., P.O. BOX 27, Garden Prairie, IL 61038. Representative: Leonard R. Kofkin, 140 South Dearborn St., Suite 1515, Chicago, IL 60603. Transporting *those commodities, which because of their size or weight, require the use of special handling or equipment*, between points in IL and WI, on the one hand, and, on the other, points in ND, NE, OK, TX, AR, LA, MS, AL, GA, and FL.

MC 146846 Sub-4, filed April 20, 1982. Applicant: LOUIS LANE, INC., 1025 S. 3rd Ave., Wausau, WI 54401. Representative: Nancy J. Johnson, 103 E. Washington St., Box 218, Crandon, WI 54820, (715) 478-3341. Transporting *paper and related products*, between points in Winnebago and Brown counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151566 (Sub-22), filed April 30, 1982. Applicant: PERRY TRANSPORT, INC., 14375-172nd Ave., Grand Haven, MI 49417. Representative: Richard O. Peel (same address as applicant), (616) 842-3550. Transporting *household cleaning machines and compounds*, between Grand Rapids, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158286 (Sub-9), filed April 29, 1982. Applicant: M.T. TRUCK LINE, INC., 4947 W. 173rd St., Country Club Hills, Ill 60477. Representative: James G. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236-5944. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL and Valparaiso, IN: From Chicago, over U.S. Hwy 41 to junction U.S. Hwy 30, then over U.S. Hwy 30 to Valparaiso, and return over the same route, serving all intermediate points and points in Lake and Porter Counties, IN as off-route points.

Note. Applicant may tack the authority herein with its existing authority.

MC 161756, filed April 30, 1982.
Applicant: LEMUEL R. WASHBURN & HELEN M. WASHBURN, d.b.a. SENIOR TRANSPORT, Umpqua Rt. Box 28, Oakland, OR 97462. Representative: Lemuel R. Washburn (same address as applicant), (503) 363-6053. Transporting *such commodities* as are dealt in or use by manufactures and distributors of building materials, between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 161776, filed April 30, 1982.
Applicant: ARIZONA FUELS CORP., P. O. Box 217, Kanab, UT 84741. Representative: Marvin Button (same address as applicant), (602) 643-5857. Transporting *petroleum and petroleum products*, between points in AZ, CA, CO, ID, NV, NM, UT, and WY.

Volume No. OP-99

Decided: May 4, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 119619 (Sub-153), filed April 26, 1982. Applicant: DISTRIBUTORS SERVICE CO., 2000 W. 43rd St., Chicago, IL 60609. Representative: Kenneth M. Piken, 95-25 Queens Blvd., Rego Park, NY 11374, 212-275-1000. Transporting *such commodities* as are dealt in or used by grocery, and food business houses, drugstores, retail department stores and discount houses, between points in Oakland and Wayne Counties, MI on the one hand, and, on the other, points in CO, CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC.

MC 136679 (Sub-3), filed April 26, 1982. Applicant: TUKWILA KENT TRUCKING/BECKER TRANSFER, INC., 12677 E. Marginal Way S., Seattle, WA 98168. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, (206) 228-3807. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, NV, NM, CO, UT, WY, MT, ID, and AK.

MC 146508, filed April 23, 1982. Applicant: LANG TRANSPORTATION, INC., Red Gate Lane, Meredith, NH 03253. Representative: Raymond P. D'Amante, P.O. Box 494, 246 Loudon Rd., Concord, NH 03301, 606-224-8777. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, MD, DE, OH, IL, TN, and VA.

MC 146519 (Sub-11), filed April 23, 1982. Applicant: MORRIS TRUCKING CORPORATION, 3201 Canal Rd., Terre

Haute, IN 47802. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638-1301. Transporting *petroleum, natural gas, and their products*, between St. Louis, MO, and points in IL, IN, KY, MI, and OH.

MC 150008 (Sub-4), Filed April 23, 1982. Applicant: KUELLA, INC., Route 2, King City, MO 64463. Representative: Michael A. Knepper, 310 Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105, 816-842-8874. Transporting *paper products and toilet articles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Riegel Textile Corporation of Greenville, SC.

MC 151419 (Sub-4), filed April 26, 1982. Applicant: GORDON JOHNSON, P.O. Box 252; Route #2, Fredericktown, OH 43019. Representative: Lewis S. Witherspoon, 2455 North Star Rd., Columbus, OH 43221, 614-486-0448. Transporting (1) *games, toys, and athletic equipment*, between points in Ashland County, OH, on the one hand, and, on the other, points in CT, MA, NJ, NY, PA, and RI, (2) *lawn and garden tools, and farm implements*, between points in Herkimer County, NY, on the one hand, and, on the other, points in IN and IL, (3) *containers, container closures and components, glassware, packaging products and scrap materials*, between points in Gloucester and Cumberland Counties, NJ, on the one hand, and, on the other, points in OH, IN, and MI, and (4) *gas and electrical appliances*, between points in Marion County, OH, on the one hand, and, on the other, points in MA, NJ, and NY.

MC 155449, filed April 21, 1982. Applicant: CHARLES LITTLE, d.b.a. CALIFORNIA FREIGHT LINES, 12424 Ore and Day Rd., Norwalk, CA 90650. Representative: Charles A. Little (same address as applicant), 213-868-1746. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY.

MC 159239, filed April 23, 1982. Applicant: ROYAL CHARTERS, LTD., 1810 Tray Lane, Kalamazoo, MI 49007. Representative: Karl L. Gotting, 1200 Bank of Lansing, MI 48933, 517-482-2400. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, beginning and ending in Kalamazoo, MI and extending to points in the U.S. (except AK and HI).

MC 156059, (Sub-1), filed April 19, 1982. Applicant: LINDERHOLM TRUCKING, INC., 5232 Hanson Ct.,

Crystal, MN 55429. Representative: Thomas R. Parnell (same address as applicant), (612) 533-0014. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with North Central Freight Association, of Minneapolis, MN.

MC 159529, filed April 13, 1982. Applicant: FOREST GROVE BUS CORP., P.O. Box 364, Forest Grove, PA. Representative: John Demcisak, 1000 N. Easton Rd., Willow Grove, PA 19090, 215-659-4700. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter and special operations, between points in PA and NJ, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 161349, filed April 26, 1982. Applicant: W. B. L. TRUCKING CO., INC., 5822 Cromo Dr., Ste 235, El Paso, TX 79912. Representative: Bill D. Long (same address as applicant), 915-594-0049. Transporting (1) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in El Paso County, TX, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MO, MS, NC, NM, NV, OH, OK, OR, SC, TN, TX, UT, WA, WI, and WY, and (2) *building materials*, between Dallas, San Antonio, and points in Tom Green County, TX, on the one hand, and, on the other, points in AR, AZ, CA, CO, FL, GA, KY, LA, MS, NC, NM, OH, OK, SC, TN, TX, and WY.

MC 161628, filed April 21, 1982. Applicant: RAM OFFICE TRANSPORT CORP., RD 3 Box 224, Delta, PA 17314. Representative: Melvin Bouman (same address as applicant), 717-456-7395. Transporting (1) *mobile office trailers and modular buildings*, and (2) *those commodities which because of their size and weight require the use of special handling or equipment*, between points in York and Lancaster Counties, PA on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, SC, VA, VT, WV and DC.

MC 161638, filed April 23, 1982. Applicant: BLAKLEY AND SONS, INC., 3031 Isleta Blvd. S.W., Albuquerque, NM 87105. Representative: Larry D. Lucas, 500 Oak St. N.E., Albuquerque, NM 87108, 505-243-9744. Transporting *ores and minerals*, between points in the U.S. under continuing contract(s) with General Pumice Corporation of Santa Fe, NM.

MC 161648, filed April 23, 1982. Applicant: NARROWS CARRIERS,

INC., Jurnee Mill Rd., P.O. Box 110, Sayreville, NJ 08072. Representative: Edward F. Bowes, Seven Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. Transporting (1) *chemicals and related products* under continuing contract(s) with Solvents Recovery Service of New Jersey, Inc., of Linden, NJ, and (2) *petroleum products*, under continuing contract(s) with Amerada-Hess Corp., of Woodbridge, NJ, between points in the U.S.

MC 161678, filed April 26, 1982. Applicant: CAPE TRANSIT CORP., 5501 Ocean Ave., Wildwood Crest, NJ 08260. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703) 522-0900. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter and special operations, beginning and ending at points in Cape May County, NJ, and extending to points in the U.S., including AK but excluding HI.

MC 161679, filed April 26, 1982. Applicant: ROBERT L. HINES, d.b.a. HINES TRUCKING, Route 1, Martell, NE 68404. Representative: Max H. Johnson, P.O. Box 6597, Lincoln, NE 68506, (402) 488-4841. Transporting (1) *self-propelled vehicles*, (2) *lawn, turf, and garden equipment*, and (3) *parts* for (1) and (2) above, between points in Lancaster County, NE, on the one hand, and, on the other, points in IA, IL, and WI. Agatha L. Mergenovich, Secretary.

[FR Doc. 82-12846 Filed 5-10-82; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP-5-101]

Motor Carriers Permanent Authority, Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of petition for leave to intervene must be filed with the Commission within 30 days after the date of this Federal Register notice addressing specifically the issue(s) indicated as the purpose for republication.

Agatha L. Mergenovich, Secretary.

MC 117878 (Sub-21) (republication), filed November 30, 1981, published in the Federal Register issue of December 21, 1981, and republished this issue. Applicant: DWIGHT CHEEK TRUCKING CO., INC., 4831 E. 25th St.,

P.O. Box 31538, Amarillo, TX 79120. Representative: Steven R. Swicegood (same address as applicant), (806) 374-5217. A decision of the Commission, Review Board 3, decided February 23, 1982, and served March 10, 1982, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *meats, meat products, meat byproducts, and articles distributed by meat-packing houses*, between Amarillo, TX, on the one hand, and, on the other, points in Colorado, Mississippi, Utah, Nevada, Oregon, Washington, Idaho, Montana, Wyoming, Kansas, Texas, and Oklahoma, and (2) *the commodities described in (1) above, and cheese and cheese products*, between points in Wisconsin, Iowa, Nebraska, Kansas, Illinois, Missouri, Oklahoma, Texas, Colorado, Arkansas, Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Georgia, North Carolina, South Carolina, and Florida, that applicant is fit, willing, and able properly to perform such service and conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate applicant's actual grant of authority.

[FR Doc. 82-12843 Filed 5-11-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket AB-111 (Sub-2)]

Detroit, Toledo and Ironton Railroad Company—Abandonment—in Ross and Pike Counties, OH; Findings

The Commission has issued a certificate authorizing Detroit, Toledo and Ironton Railroad Company to abandon its line between Thrifton (near milepost 249.2) and Waverly (near milepost 281) OH, a distance of 32.4 miles in Ross and Pike Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 4517, Interstate Commerce Commission, Washington, DC 20423, not later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich, Secretary.

[FR Doc. 82-12847 Filed 5-11-82; 8:45 am]
BILLING CODE 7035-01-M

[Docket AB-111 (Sub-3)]

Detroit, Toledo and Ironton Railroad Company—Abandonment in Scioto and Lawrence Counties, OH; Findings

The Commission has issued a certificate authorizing the Detroit, Toledo and Ironton Railroad Company to abandon its mile rail line near Bloom Junction, OH (milepost 330.17) to the end of its line at Ironton, OH (milepost 359.52) in Scioto and Lawrence Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich, Secretary.

[FR Doc. 82-12848 Filed 5-11-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket 29874]

Union Pacific Railroad Company and Oregon Short Line Railroad Company—Abandonment Exemption—2.54 Miles of Track in Ogden, UT

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by Oregon Short Line Railroad Company and discontinuance of service by Union Pacific Railroad Company over 2.54 miles of track in Ogden, Weber County,

UT subject to conditions for the protection of employees.

DATE: Exemption is effective on June 11, 1982. Petitions for reconsideration must be filed by June 1, 1982. Petitions for stay must be filed by May 21, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423.

(2) Petitioner's Representative: Mark A. Kalafut, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

Pleadings should refer to Finance Docket No. 29874.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact T. S. Infosystems, Inc., Room 2227, 12th & Constitution Avenue, Washington, D.C. 20423, or by calling: (202) 289-4357—D.C. Metropolitan Area or (800) 424-5403—toll free for outside the D.C. area.

Dated: May 5, 1982.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham, Sterrett, and Andre.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-12848 Filed 5-11-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-94 (Preliminary)]

Bicycle Tires and Tubes From Taiwan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-94 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of bicycle tires and tubes, provided for in items 772.48 and 772.57, respectively, of the Tariff Schedules of the United States

(TSUS)(1982), which are alleged to be sold in the United States at less than fair value.

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. John MacHatton, Supervisory Investigator, U.S. International Trade Commission; telephone 202-523-0439.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by counsel for Carlisle Tire and Rubber Company, Carlisle, Pa. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by June 14, 1982 (19 CFR 207.17). This investigation will be subject to the provisions of part 207 of the Commission's Rules and Practice and Procedure (19 CFR Part 207, 44 FR 76457 and 47 FR 6190), and particularly subpart B thereof. A copy of the petition filed in this case is available for public inspection during official working hours (8:45 a.m. to 5:15 p.m.) at the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 202/523-0448.

Written Submissions

Any person may submit to the Commission on or before May 28, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on May 27, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the Supervisory Investigator for the investigation, Mr. John MacHatton,

telephone 202-523-0439, not later than May 25, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201). Further information concerning the conduct of the conference will be provided by Mr. John MacHatton.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: May 6, 1982.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 82-12945 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-101]

Certain Hot Air Corn Poppers and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation. No. 337-TA-101 as the result of the dismissal of all remaining party respondents.

SUMMARY: Notice is hereby given that the Commission has granted Motions Nos. 101-41 to dismiss three respondents remaining in the investigation as parties on the basis of settlement agreements which the complainant has entered into with each of the respondents concerned. Prior to the Commission's action on those motions, the Commission issued orders terminating the investigation as to each of the other party respondents. Consequently, upon the granting of Motions Nos. 101-41, the investigation has been terminated in its entirety.

AUTHORITY: The investigation was conducted pursuant to 19 U.S.C. 1337(b)(1). The Commission's authority to terminate the proceedings on the basis of settlement agreements is contained in § 210.51(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(c)).

SUPPLEMENTARY INFORMATION: The investigation was conducted in order to determine whether there was a violation of section 337 of the Tariff Act of 1930 in the importation of certain hot air corn poppers and components thereof into the United States, or in the sale of such articles, which were alleged to infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843, the effect or tendency of which was to destroy or substantially injure an industry, efficiently and economically operated, in the United States. These proceedings were initiated on the basis of a complaint filed on behalf of Wear-Ever Aluminum, Inc., a wholly owned subsidiary of the Aluminum Company of America and the assignee of the patent in question.

On January 5, 1982, the complainant and respondents Yamada Electric Industries, Ltd., Sunbeam Corp., and Maxim Associates Corp. filed joint motions to terminate the investigation with respect to those respondents. Supplements to the motions were filed on January 12, 1982. Termination was sought on the basis of settlement agreements which the complainant had entered into with each of the respondents concerned. The motions were supported by the Commission investigative attorney. On January 19, 1982, the presiding officer issued an order recommending that the Commission accept the settlement agreements and that Motions Nos. 101-41 be granted.

Before taking final action on this matter, the Commission published notice of the motions along with nonconfidential summaries of the agreements in the Federal Register and solicited written comments on the proposed termination from the public and other Federal agencies. (47 FR 17348, Feb. 18, 1982) No comments adverse to termination were received.

On April 27, 1982, the Commission voted to grant Motions Nos. 101-41 and to issue an order dismissing Yamada, Sunbeam, and Maxim as respondents in these proceedings. Prior to the granting of those motions, the Commission had issued orders dismissing each of the other party respondents. Consequently, upon the granting of Motions Nos. 101-41, no respondents remained in the proceedings. Thus, the investigation was terminated in its entirety.

Copies of the motions, the settlement agreements (except for the confidential business information contained therein), the Commission's Action and Order, and all other nonconfidential documents on the record of this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15

p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Room 224, Washington, D.C. 20436, telephone 202-523-0350.

Issued: May 4, 1982.

By Order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 82-12948 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-3]

Doxycycline; Denial of Motion To Modify Exclusion Order

AGENCY: International Trade Commission.

ACTION: Denial of motion to modify exclusion order.

SUPPLEMENTARY INFORMATION: On April 12, 1979, the Commission issued an order prohibiting the importation into the United States of doxycycline falling within claim 10 of U.S. Letters Patent 3,200,149 for the remaining term of the patent except under license. That order is now in force.

On November 5, 1981, Danbury Pharmacal, Inc., filed a motion with the Commission seeking modification of the doxycycline exclusion order to permit the importation of small quantities of doxycycline to be used for the purpose of obtaining Food and Drug Administration certification under 21 U.S.C. 357, and not for sale to the consuming public.

On May 4, 1982, the Commission denied the Danbury motion as moot in light of a Federal court decision enjoining Danbury from seeking modification of the Commission's exclusion order.

FOR FURTHER INFORMATION CONTACT: Laird M. Street, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0124.

Issued: May 5, 1982.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 82-12946 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[332-73]

Extension of Period for Public Comment on Explanatory Notes to Certain Provisionally Adopted Chapters of the Harmonized Commodity Description and Coding System

AGENCY: International Trade Commission.

ACTION: Extension of period for public comment, pursuant to Commission Investigation No. 332-73, on volumes 3, 4, and 5 of Explanatory Notes to sixteen provisionally adopted chapters of the Harmonized Commodity Description and Coding System (Harmonized System), as described in the Commission's public notice of April 14, 1982 (47 FR 17135, April 21, 1982).

WRITTEN SUBMISSIONS: Parties wishing to submit written comments should do so by filing them with the Secretary of the Commission at his office, 701 E Street, NW., Washington, DC 20436, no later than the close of business on June 15, 1982. Copies of the Explanatory Notes are available for public inspection at that office or may be sent upon request. Previously, the deadline for submission of written comments was April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarten, Director, or Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone (202) 523-0370 or 0362.

Issued: May 5, 1982.

By order of the Commission.

Kenneth Mason,
Secretary.

[FR Doc. 82-12944 Filed 5-11-82; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-93 (Preliminary)]

Frozen French Fried Potatoes From Canada

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigation and scheduling of a conference to be held in connection therewith.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-93 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially

injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of frozen french fried potatoes, provided for in item 141.88 of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

EFFECTIVE DATE: April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Bill Schechter, Office of Investigations, U.S. International Trade Commission, telephone 202/523-0300.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition filed by counsel for McCain Inc., Washburn, Maine. The Commission must make its determination in this investigation within 45 days after the date of the filing of the petition, or by June 14, 1982 (19 CFR 207.17). This investigation will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457 and 47 FR 6190), and particularly subpart B thereof. A nonconfidential copy of the petition is available for public inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, Telephone 202/523-0448.

Written Submissions

Any person may submit to the Commission on or before May 28, 1982, a written statement of information pertinent to the subject matter of this investigation. A signed original and fourteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10:00 a.m., on May 25, 1982, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington,

D.C. Parties wishing to participate in the conference should contact the supervisory investigator for the investigation, John Mac Hatton, telephone 202/523-0439, not later than May 20, 1982, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

For further information concerning the conduct of this investigation rules and general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201), 47 FR 6182, February 10, 1982. Further information concerning the conduct of the conference will be provided by Mr. MacHatton.

This notice is published pursuant to § 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

Issued: May 5, 1982.

By order of the Commission.

Kenneth P. Mason,
Secretary.

[FR Doc. 82-12947 Filed 5-11-82; 8:45 am]
BILLING CODE 7020-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel (Challenge); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Challenge) to the National Council on the Arts will be held on June 23, 1982, from 9:00 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr.

John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts, May 5, 1982.

[FR Doc. 82-12886 Filed 5-11-82; 8:45 am]
BILLING CODE 7537-01-M

Museum Advisory Panel (Policy); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Policy) to the National Council on the Arts will be held on June 8-9, 1982, from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E. Street, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on June 8, 1982, from 9:00 a.m.-5:30 p.m. to discuss policy and future directions.

The remaining sessions of this meeting on June 9, 1982, from 9:00 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts, May 5, 1982.

[FR Doc. 82-12887 Filed 5-11-82; 8:45 am]
BILLING CODE 7537-01-M

Music Advisory Panel (Challenge); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge) to the National Council on the Arts will be held

on June 7, 1982, from 9:00 a.m.-5:30 p.m. in room 1422 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 5, 1982.

[FR Doc. 82-12886 Filed 5-11-82; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel (Intermediate Companies); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Intermediate Companies) to the National Council on the Arts to be held on June 7-8, 1982, from 9:00 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington,

D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

May 5, 1982.

[FR Doc. 82-12886 Filed 5-11-82; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor; Meeting Cancellation

The ACRS Subcommittee on Advanced Reactors scheduled for May 17 and 18, 1982, at the Argonne National Laboratory, Building 208, Room C-234, Argonne, IL has been cancelled indefinitely. Notice of this meeting was published May 4, 1982 (47 FR 19255).

Dated: May 7, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-12959 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Nuclear Power Station); Exemption

I

The Boston Edison Company (the licensee) is the holder of Facility Operating License No. DPR-35 which authorizes operation of the Pilgrim Nuclear Power Station. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection

of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, Section 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 9, 1981, as amended October 29, 1981, and March 11, 1982, Boston Edison Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to re-examine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other

acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon other extensiveness and number of the areas involved, the time required for this re-examination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Pilgrim Nuclear Power Station had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSE) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in supplements to the FPSE. The FPSE and its supplements supported the issuance of an amendment to the operating license

of the Pilgrim Station¹ which required modifications to be made to plant physical features, systems and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, the Pilgrim Nuclear Power Station has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G of Appendix R to 10 CFR 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative and Dedicated Safe Shutdown Capability and thus affects the final reassessment and redesign, if necessary, of this feature at the Pilgrim Station. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Pilgrim in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and

hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c) (2) and (3) are calculated, is extended to June 20, 1982;

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81-12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the

¹ Pilgrim—Operating License DPR-35. Amendment 35 supported by FPSE issued December 21, 1979.

exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission,
Harold R. Denton,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12850 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co. (Brunswick Steam Electric Plant Units 1 and 2); Exemption

I

The Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62 which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2. These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises two boiling water reactors at the licensee's site located in Brunswick County, North Carolina.

II

On November 19, 1980, the Commission published a revised 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection

of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 6, 1981, as amended September 14, 1981, and January 18, 1982, Carolina Power & Light Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from Section III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c) (2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of

Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Brunswick Units had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSE) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in two supplements to the FPSE. The FPSE and its supplements supported the issuance of amendments to the operating licenses of the Brunswick Units¹ which required

¹ Brunswick Unit 1—Operating License DPR-71; Amendment 11 supported by FPSE issued

modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, the Brunswick Units have been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at the Brunswick Units in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by generic letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this exemption that requires all such information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plan and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

November 22, 1977. Amendment 23 supported by Supplement 1 to FPSE issued April 6, 1979. Amendment 28 supported by Supplement 2 to FPSE issued June 11, 1980.

Brunswick Unit 2—Operating License DPR-62: Amendment 37 supported by FPSE issued November 22, 1977. Amendment 47 supported by FPSE issued April 6, 1979. Amendment 51 supported by Supplement to FPSE issued June 11, 1980.

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated, is extended to June 30, 1982; *Provided* the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.c., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81-12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of

the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-12951 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498A, 50-499A and 50-445A, 50-446A]

Houston Lighting & Power Co., et al. (South Texas Project, Units 1 and 2) and Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Memorandum and Order Approving Settlement Agreements and Proposed License Conditions and Dismissing Proceeding

May 6, 1982.

Jurisdiction and Procedural History

On December 12, 1974, the Commission issued a construction permit for Comanche Peak Steam Electric Station, Units 1 and 2 (hereinafter "Comanche Peak"). On January 14, 1976, the Commission issued a construction permit for South Texas Project, Units 1 and 2 (hereinafter "South Texas"). In both cases the Attorney General advised the Commission that there was no need for an antitrust hearing. Thereafter, on June 4, 1976, Central Power and Light Company, one of the applicants in South Texas, filed a request for hearing on antitrust issues in that matter. On June 15, 1977, the Commission found "changed circumstances" in South Texas and requested further antitrust advice from the Attorney General. On February 21, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in South Texas. On June 26, 1978, the Commission again found "changed circumstances" in Comanche Peak and requested further antitrust advice from the Attorney General. On August 1, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in Comanche Peak. In both cases, the Commission ordered antitrust proceedings to be commenced.

Numerous cities, utilities, and electric cooperatives intervened in these two proceedings. The Department of Justice (hereinafter "Justice") and the Nuclear Regulatory Commission Staff (hereinafter "Staff") participated in both proceedings. The two proceedings were consolidated for discovery in 1978 and for hearing in 1980. Discovery took place in 1979 and 1980. On September 14, 1980, all of the applicants in both proceedings, Justice and the Staff, submitted two sets of proposed license conditions representing a settlement of these matters acceptable to the applicants, Justice, and Staff. The only intervenor which opposed the settlement and proposed license conditions was the Public Utilities Board of the City of Brownsville, Texas (hereinafter "Brownsville"). Thereafter, on December 24, 1980, Conformed Settlement License Conditions were filed.

A Conference of Counsel was held on April 13, 1982. Again, all parties to both of these matters, except Brownsville, reiterated their support for the settlement or, in any event, their lack of opposition to it. Brownsville was directed to respond to four specific questions concerning its opposition to the settlement. On April 22, 1982, Brownsville responded that it no longer opposed the proposed settlement and did not want the settlement to be rejected. Thus, there is no opposition to the proposed settlement and Conformed License Conditions.

Test for Settlement Approval

The Commission's Rules of Practice encourage settlement of contested proceedings as follows:

"The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding. Therefore, to the extent that it is not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable settlement of contested initial licensing proceedings is encouraged. It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose." 10 CFR 2.759.

As noted in the preceding section, this consolidated proceeding has a long and arduous history punctuated by adversary relationships of competent counsel. Justice, which initially recommended that a hearing be held on antitrust issues in both matters, is now in accord with the settlement. Interested parties have been afforded the opportunity to intervene. All intervenors were given the opportunity to object to the settlement and proposed license conditions. None did so. Since no party

to this consolidated proceeding opposes the settlement or proposed license conditions, it would not be fruitful or in the public interest to dissect the settlement agreement in search of an antitrust issue for hearing. Hence, I find that based upon the foregoing, the proposed settlement and license conditions are fair and reasonable and are in the public interest. Accordingly, the settlement is approved and the conditions shall be attached to the operating licenses. Since no further relief is requested by any party to this consolidated proceeding, this action is dismissed.

Wherefore, it is ordered this 6th day of May, 1982, that the settlement agreements are hereby approved.

It is further ordered that the Conformed License Conditions for Comanche Peak attached hereto and incorporated herein, marked as "Appendix A-Comanche Peak" shall be immediately effective and shall be attached to the operating license of Comanche Peak.

It is further ordered that the Conformed License Conditions for South Texas, attached hereto and incorporated herein, marked as "Appendix B-South Texas" shall be immediately effective and shall be attached to the operating license of South Texas.

It is further ordered that this consolidated proceeding is dismissed.

James A. Laurensen,
Administrative Law Judge.

Appendix A—Comanche Peak; License Conditions for Comanche Peak Steam Electric Station Units 1 and 2

Conformed, December 1980.

D. (1) The following definitions apply to paragraph 3.D.(2):

(a) "Applicants" means severally and jointly Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Company and each other subsidiary, affiliate or successor company now or hereafter engaged in the generation, transmission and/or the distribution of electric power in the State of Texas.

(b) "North Texas Area" means the following Texas Counties: Anderson, Andrews, Angelina, Archer, Bastrop, Baylor, Bell, Borden, Bosque, Brown, Burnet, Cherokee, Clay, Coke, Collin, Comanche, Cooke, Coryell, Crane, Culberson, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Freestone, Gaines, Glasscock, Grayson, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hunt, Jack, Johnson, Kaufman, Kent, Lamar, Lampasas, Leon, Limestone, Loving, Lynn, Martin, McLennan, Midland, Milam, Mitchell, Montague, Nacogdoches, Navaro, Nolan, Palo Pinto, Parker, Pecos, Rains, Reagan, Red River, Reeves, Rockwall, Rusk, Scurry, Schackelford, Smith, Somervell, Stephens,

Sterling, Tarrant, Terry, Tom Green, Travis, Upton, Van Zandt, Ward, Wichita, Walbarger, Williamson, Winkler, Wise, Wood, and Young.

(c) "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning, operating or contractually controlling, or proposing in good faith to own, operate or contractually control, facilities for generation of electric power and energy; provided, however, that as used in paragraphs 3.D.(2)(a), 3.D.(2)(b); 3.D.(2)(g), 3.D.(2)(i), 3.D.(2)(j)(a) and (b), 3.D.(2)(k), 3.D.(2)(l) and 3.D.(2)(m), "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning or operating, or proposing in good faith to own or operate, facilities for generation, transmission and/or distribution of electric power and energy.

(d) "Entity in the North Texas Area" means an Entity which owns or operates facilities for the generation, transmission and/or distribution of electric power in any area within the North Texas Area.

(e) "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

(f) "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

(g) The terms "connection" and "interconnection" are used interchangeably.

The Applicants defined in Paragraph 3.D.(1)(a) are subject to the following antitrust conditions:

The Applicants shall afford an opportunity to participate in the Comanche Peak Steam Electric Station, Units 1 and 2, for the term of the instant license, or any extension or renewal thereof, to any Entity(ies) in the North Texas Area making a timely request therefor, through a reasonable ownership interest in such unit(s) on reasonable terms and conditions and on a basis that will fully compensate Applicants for their costs. It is understood that any request received prior to December 1, 1973, shall be deemed to be timely. In connection with such participation, the Applicants also will interconnect with and offer transmission service as may be required for delivery of such power to such Entity(ies) at a point or points on the Applicants' system on a basis that will fully compensate the Applicants for their costs including a reasonable return on investment. Notwithstanding the December 1, 1973 date appearing hereinabove, the Applicants' offer of participation in Comanche Peak, Units 1 and 2, to Tex-La Electric Cooperative of Texas, Inc. shall not obligate the Applicants, by virtue of such offer, to offer an opportunity to participate in Comanche Peak, Units 1 and 2, to any other Entity.

(b) The Applicants, as long as they are members of the Texas Interconnected System (TIS), shall support reasonable requests by Entities in the North Texas Area having generating capacity for membership in TIS. The Applicants shall also propose and actively support, as long as they are members

thereof, the creation of one or more additional classifications of TIS membership based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the North Texas area who desire membership. The Applicants shall also support requests by qualified Entities in the North Texas Area for membership in any other electric utility planning or operating organization or of which the Applicants are members (other than one involving only the Applicants). The Applicants shall share information with other Entities with respect to, and shall, with other such entities through any electric utility planning organizations (other than one involving only the Applicants) of which the Applicants are members, conduct and/or participate in joint studies and planning of future generation, transmission and related facilities; provided, however, this condition shall not obligate the Applicants to conduct or participate in such joint studies or joint planning unless (1) the studies or planning are requested and conducted in good faith and are based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.

(c) The Applicants will connect with, coordinate reserves, and sell, purchase or exchange emergency and/or scheduled maintenance bulk power with any Entity(ies) in the North Texas Area on terms that will provide for the Applicants' costs, including a reasonable return on investment, in connection therewith and allow such Entity(ies) full access to the benefits of such reserve coordination.

(d) Emergency service and/or scheduled maintenance service to be provided by each party shall be furnished to the fullest extent available from the supplying party and desired by the party in need. If requested, Applicants shall exchange maintenance schedules with any Entity in the North Texas Area. The Applicants and each such Entity(ies) shall provide to the other emergency service and/or scheduled maintenance service if and when available to the extent they can do so without unreasonably impairing service to their customers including other electric systems to whom they have firm commitments. Any curtailment or refusal to provide such emergency and/or scheduled maintenance service shall be on a non-discriminatory basis.

(e) The Applicants and the other party(ies) to a reserve sharing arrangement shall from time to time jointly establish the minimum reserves to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties in accordance with good industry practice as developed in the area. Unless otherwise agreed upon, minimum reserve requirements shall be calculated as a percentage of each party's estimated net peak

load demand (taking into account firm sales and firm purchases). No party to the arrangement shall be required to maintain greater reserves than the percentage which results from the aforesaid calculation. The reliability of power delivered into TIS-ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants the same as losses of generation within TIS-ERCOT. The Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.

(f) The parties to such a reserve sharing arrangement shall provide such amounts of spinning reserves as may be equitable and adequate to avoid the imposition of unreasonable demands on the other party(ies) in meeting the normal contingencies of operating its (their) system(s). However, in no circumstances shall such reserve requirement exceed the installed reserve requirement.

(g) Interconnections with any Entity will not be limited to low voltages when higher voltages are requested and are available from the Applicants' installed facilities in the area where a connection is desired, when the proposed arrangement is found to be technically and economically feasible. Control and telemetering facilities shall be provided as required for safe and prudent operation of the interconnected systems.

(h) Interconnection and coordination agreements shall not embody any restrictive provisions pertaining to intersystem coordination. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.

(i) The Applicants shall participate in and facilitate the exchange of bulk power by transmission over the Applicants' transmission facilities between or among two or more Entities in the North Texas Area with which the Applicants are connected, and between any such Entity(ies) and and Entity(ies) outside the North Texas Area between whose facilities the Applicants' transmission lines and other transmission lines, including any direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given Applicants reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate the Applicants for their costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to any regulatory agency(ies) having jurisdiction thereof. The Applicants shall not refuse to provide such transmission

service merely because the rates to be charged therefor are the subject of dispute with such Entity. The Applicants shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded, other transmission may be for emergency use and operated either unloaded or partially loaded. (The foregoing applies to any Entity(ies) to which the Applicants may be connected in the future as well as those to which they are not connected).

(j)(a) The Applicants shall include in their planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraphs (i) and (k), provided any Entity(ies) in the North Texas Area gives the Applicants sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates the Applicants for their costs including a reasonable return on investment. The Applicants shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of their obligations above, the Applicants shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to its share of the cost of the addition. An such contribution made in aid of construction or ownership interest shall be properly credited in determining any wheeling charges. If the Applicants engage in joint ownership of transmission lines with any other Entity, they shall not refuse to engage in similar transactions in comparable circumstances with other Entities, subject to the provisions limiting the Applicants' obligations above.

(j)(b) Applicants shall provide other Entities with reasonable access to any future interstate interconnection facilities which Applicants may own, on terms and conditions comparable to the provisions of paragraph D.2(f) hereof, and subparagraph (a) of this paragraph.

(k) The Applicants shall, upon reasonable advance notice, sell full and partial requirements bulk power to requesting Entities in the North Texas Area having, on the date of this license, non-aggregated generating capacity of less than 200 MW (including no generating capacity) under reasonable terms and conditions which shall provide for recovery of Applicants' costs, including a reasonable return on investment. The Applicants shall not be required to make any such sale if they do not have available sufficient bulk power or adequate transmission to provide the requested service or if the sale would impair their ability to render adequate and reliable service to their own customers or their ability to discharge prior commitments.

(1)(a) In connection with the performance of their obligations herein and subject to the provisions of this paragraph, the Applicants, will not disconnect from or refuse to connect their then-existing or proposed facilities with the facilities of any Entity, used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and the Applicants will not prevent any Entity with which they maintain connection from establishing, maintaining, modifying, or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to paragraph 1(b) and 1(d) below), any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of the Applicants under the Federal Power Act shall have filed an application with and used its best efforts to obtain an order from the Federal Energy Regulatory Commission, applicable to the Applicants under Section 210, 211, and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an Application pursuant to this subparagraph, the Applicants agree that they will not unreasonably oppose any such application. In the event such application is denied by a valid order of the Federal Energy Regulatory Commission, any continuing refusal by the Applicants to establish, maintain, modify or utilize such connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the Applicants in such NRC proceeding.

(b) Applicants shall not enter into or maintain any agreement or understanding with any other Entity(ies) to refuse to deal with another Entity(ies) with the purpose of maintaining a nonjurisdictional status under the Federal Power Act, and in the event that Applicants refuse to make an interconnection with or choose to disconnect from any Entity(ies), such decision and/or action by the Applicants will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after Applicants decide to undertake such action, they may notify any affected Entity.

(c) In the event that an Entity files an application pursuant to subparagraph (a) of this paragraph solely by reason of Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act, Applicants agree to pay such Entity's reasonable expenses in connection with such

application and the ensuing proceeding,¹ provided, however, that Applicants shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by Applicants at FERC, and provided further, that Applicants shall not be required to pay for any expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act.

(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connections with any Entity(ies), provided, that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.

(m) Applicants agree to use their best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs 3.D.(2)(1)(a) and (b) above.

(n) The Applicants will, in accordance with applicable law, allow ownership participation in future nuclear generating facilities which they may construct, own, and operate in the State of Texas on conditions similar to these License Conditions.

(o) Applicants shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among Applicants, Central & South West Corporation, Houston Lighting & Power Company and the FERC Staff dated September 11, 1980; Applicants shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including FERC Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate.

(p) The foregoing conditions shall be implemented i) in a manner consistent with applicable Federal, state and local statutes and regulations and ii) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.

Appendix B—South Texas; License Conditions for South Texas Project Units Nos. 1 and 2

Confirmed, December 1980.

I. A. The following definitions apply to paragraph I.B:

¹ This obligation shall not apply to the expenses of the Central & South West Corporation or Houston Industries or any of their respective subsidiaries, including, but not limited to, the expenses of Central & South West Corporation and any of its subsidiaries incurred in FERC Docket No. EL79-8.

(1) "Applicants" means severally and jointly Houston Lighting and Power Company (HLP), Central Power and Light Company (CPL), City Public Service Board of San Antonio (CPSB), and the City of Austin Electric Utility Department (COA) and any of their respective successors, assignees, or subsidiaries engaged in the generation, transmission or the distribution of electric power. Where a license condition is directed to a specific Applicant, that Applicant is identified.

(2) "South Texas Area" means (a) those counties in which Applicant's serve electric customers at wholesale or retail, and (b) those other areas, if any, surrounded by the areas in (a) above.

(3) "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association of any of the foregoing owning, operating, or contractually controlling, or proposing in good faith to own, operate, or contractually control facilities for generation, transmission or distribution of electric power and energy for the purpose of providing electric utility service.

(4) "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

(5) "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

(6) The terms "connection" and "interconnection" are used interchangeably. B. The Applicants defined in Paragraph I.A.(1) are subject to the following antitrust conditions:

(1)(a) CPL shall afford to the Public Utilities Board of the City of Brownsville an opportunity to participate in the South Texas Project, Units 1 and 2, on reasonable terms and conditions and in accordance with the South Texas Project Participation Agreement and on a basis that will fully compensate CPL for its actual costs, provided that Brownsville must enter into a firm commitment to acquire the ownership interest made available to it by the terms of this paragraph no later than January 1, 1983. The ownership interest which CPL shall make available to Brownsville shall be computed by multiplying CPL's Generation Entitlement Share in STP Units 1 and 2 by the ratio of Brownsville's peak demand for 1980 to CPL's peak demand for 1980. In the event Brownsville obtains an ownership interest from any Applicant other than CPL, the ownership interest which CPL must make available to Brownsville hereunder shall be reduced by one megawatt for each megawatt in excess of 12 megawatts that Brownsville acquires from other Applicants. Applicants shall not exercise any rights of first refusal over Brownsville's efforts to participate in the South Texas Project to the extent of the first 50 MW of such ownership share.

(b) CPL shall afford Brownsville reasonable transmission services to enable it to obtain delivery of power from the STP, provided that CPL is fully compensated for its costs of such transmission services plus a reasonable return on investment, and provided further that in the event transmission capacity is not

available to provide such transmission services, the provisions of Paragraph I.B.(4) hereof define the extent of the obligation which CPL has with respect to the construction of additional transmission facilities necessary to provide such transmission service.

(c) CPL will also afford all reasonable coordination services (including but not limited to reserve sharing, backup power, maintenance power and emergency power) necessary for Brownsville to have effective access to power from STP obtained from CPL, provided that CPL is fully compensated for its costs of providing such coordination services plus a reasonable return on investment.

(d) Each Applicant shall facilitate where necessary Brownsville's obtaining the participation interests and services specified in paragraphs 1(a), 1(b) and 1(c) above.

(2) The Applicants, as long as they are members of the Texas Interconnected Systems (TIS) or any other organization which considers the planning for or operations of ERCOT-TIS electric utilities, shall support reasonable requests by Entities in the South Texas Area having generation capacity for membership in TIS or such other organizations. The Applicants shall also propose and actively support, as long as they are members thereof, the creation of one or more additional classifications of TIS membership, based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the South Texas Area who desire membership. The Applicants shall share information with other Entities with respect to, and shall conduct with other such Entities through any electric utility planning organizations of which the Applicants are members, joint studies and planning of future generation, transmission and related facilities; provided, however, that this condition shall not obligate the Applicants to conduct such joint studies or joint planning unless (1) the studies or planning are requested and carried out in good faith and based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.

(3) Each Applicant shall participate in and facilitate the exchange of bulk power by transmission over its own transmission facilities between or among two or more Entities in the South Texas Area with which the Applicant is connected; and between any such Entity(ies) and any Entity(ies) outside the South Texas Area between whose facilities the Applicant's transmission lines and other transmission lines, including direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given reasonable advance notice

of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate an Applicant for its costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to the jurisdiction of the appropriate regulatory agency(ies). Where the rates to be charged are subject to the jurisdiction of an appropriate regulatory authority, the Applicants shall not refuse to provide such transmission services merely because the rate(s) to be charged therefor are the subject of dispute with such Entity(ies). An Applicant shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded other transmission may be for emergency use and operated either unloaded or partially loaded.

(4) Each Applicant shall include in its planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraph I.B.(3) (and I.B.(5) for CPL), provided any Entity(ies) in the South Texas Area gives an Applicant sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates an Applicant for its costs including a reasonable return on investment.¹ An Applicant shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of the obligations above, an Applicant shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to its share of the cost of the addition. Any such contribution made in aid of construction or ownership interest shall also be properly credited in determining any wheeling charges. If an Applicant engages in joint ownership of transmission lines with any other Entity(ies), it shall not refuse to engage in similar transaction in comparable circumstances with other Entities, subject to the provisions limiting an Applicant's obligations above.

(5) CPL shall, upon reasonable advance notice, enter into arrangements for the sale of full and partial requirements bulk power pursuant to a filed tariff to any requesting Entity having a non-aggregated generating capacity of 200 megawatts or less under reasonable terms and conditions which shall include a provision for CPL to recover its costs of providing such service plus a reasonable return on investment. Such tariff shall not require CPL to enter into any arrangement for such sale(s) if (a) it does not have available sufficient bulk power or

adequate transmission to provide the requested service; or (b) the sale would impair CPL's ability to render adequate and reliable service to its own customers or its ability to discharge prior commitments. It is expressly recognized, and such tariff may reflect, that the determination whether sufficient bulk power or adequate transmission is available to accommodate a request for full or partial requirements bulk power will consider and recognize that (1) CPL will be engaging in centralized economic dispatch with its affiliates in accordance with, and pursuant to the requirements of, the Public Utility Holding Company Act of 1935, (2) pursuant to such requirements CPL may first utilize its generating and transmission capacity to accomplish such centralized economic dispatch before its generating and transmission capacity is made available for full or partial requirements bulk power sales under the tariff, and (3) if other CSW system capacity becomes available by reason of CPL's participation in such centralized economic dispatch, then such other CSW system capacity will, at the option of CSW, be made available in lieu of CPL's obligation to provide such capacity. Any curtailment of CPL's full or partial requirements sales shall be on a reasonable and non-discriminatory (where possible) basis.

(6)(a) In connection with the performance of its obligations herein and subject to the provisions of this paragraph, HLP shall not disconnect from or refuse to connect its then-existing or proposed facilities with the facilities of any Entity used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and HLP will not prevent any Entity with which it maintains connections from establishing, maintaining, modifying or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to subparagraphs 6(b) and 6(d) below) any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of HLP under the Federal Power Act shall have filed an application with and used its best efforts to obtain an order from the FERC, applicable to HLP under Sections 210, 211 and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an application pursuant to this subparagraph, HLP agrees that it will not unreasonably oppose any such application. In the event such application is denied by a valid order of the FERC, any continuing refusal by HLP to establish, maintain, modify or utilize such connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such

¹ Nothing in this paragraph shall require CPSEB or COA to undertake any action(s) which may be contrary to any state constitutional provision.

Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the HLP in such NRC proceeding.

(b) HLP shall not enter into or maintain any agreement or understanding with any other Entity(ies) or Applicant to refuse to deal with another Entity(ies) or Applicant(s) with the purpose of maintaining a non-jurisdictional status under the Federal Power Act and in the event that HLP refuses to make an interconnection with or chooses to disconnect from any Entity(ies), such decision and/or action by HLP will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however that after HLP decides to undertake such action, it may notify any affected Entity of its decision.

(c) In the event that an Entity files an application pursuant to subparagraph (a) of this paragraph solely by reason of HLP's desire to maintain its non-jurisdictional status under the Federal Power Act, HLP agrees to pay such Entity's reasonable expenses in connection with such application and the ensuing proceeding,* provided, however, that HLP shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by HLP at FERC, and provided further, that HLP shall not be required to pay for any costs or expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of HLP's desire to maintain its non-jurisdictional status under the Federal Power Act.

(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connection with any Entity(ies), provided that nothing herein shall preclude an Applicant from raising any legal or equitable defense that may be available to it.

(7) HLP agrees to use its best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs (6)(a) and (6)(b) hereof.

(8) If Applicants participate in any future nuclear units other than those which are now under construction or for which an application for a construction permit has been filed, they will afford similar participation to Entities in the South Texas Area on a reasonable basis.

(9) Applicants agree that the reliability of power delivered into TIS-ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for

purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants in the same way as losses of generation within TIS-ERCOT. Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.

(10) HLP and CPL shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among HLP, Central and South West Corporation, Texas Utilities Company and the FERC staff, dated September 11, 1980. HLP and CPL shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate.

(11) The foregoing conditions shall be implemented (1) in a manner consistent with applicable Federal, state and local statutes and regulations, and (2) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.

[FR Doc. 82-12952 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District (Cooper Nuclear Station); Exemption I

The Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR-46 which authorizes operation of the Cooper Nuclear Station. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Nemaha County, Nebraska.

II

On November 19, 1980, the Commission on published a revised § 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR

76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 18, 1981, as amended October 30, 1981, and January 29, 1982, Nebraska Public Power District requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G of Appendix R as follows:

(1) Extend from March 19, 1981, to June 30, 1982, the date for submittal of plans and schedules to achieve compliance with Section III.G.2 of Appendix R required by § 50.48(c)(5);

(2) Extend from March 19, 1981, to June 30, 1982, the date for filing additional exemptions from Section III.G. pursuant to §§ 50.12(a) and 50.48(c)(6);

(3) Extend from March 19, 1981, to June 30, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3., if such are necessary; and

(4) Extend from February 17, 1981, to June 30, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated. Although this was not specifically requested, implicit in your request for

*This obligation shall not apply to the expenses of Central and South West Corporation or Texas Utilities Company or any of their respective subsidiaries, including but not limited to the expenses of CSW and any of its subsidiaries incurred in FERC Docket No. EL79-8.

exemption is a similar extension in the completion date for the modifications resulting from the reanalysis and redesign.

When this Fire Protection Rule was approved by the Commission, it was understood that the time for each licensee to reexamine those previously-approved configurations at its plant to determine whether they meet the requirements of Section III.G of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3 of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants, was not provided. Therefore, additional time is being used to complete those submittals also.

III

Prior to the issuance of Appendix R, the Cooper Nuclear Station had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons

learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present revised form constitutes the section of the Standard Review Plant used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSE) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in a supplement to the FPSE. The FPSE and its supplement supported the issuance of amendments to the operating license of Cooper Nuclear Station¹ which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, the Cooper Nuclear Station has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time to quantify, in detail, the differences between what was recently and the specific requirements of Section III.G to Appendix R of 10 CFR Part 50.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Cooper Nuclear Station in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already-completed upgrading of this facility, there is no undue risk to the health and safety of the public involved in continued operation until the completion of this reassessment on June 30, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete; that is, not all of the information requested by Generic Letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such information to be submitted by the date granted.

¹ Cooper—Operating License DPR-46, Amendment 56 supported by FPSE Issued May 23, 1979, Amendment 66 supported by Supplement 1 to FPSE issued November 21, 1980.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to June 30, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to June 30, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, as required by § 50.48(c)(5) is extended to June 30, 1982; and

(4) The date February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated, is extended to June 30, 1982; Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in Enclosure 2 to generic letter 81-12, dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c)

even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal, nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 4th day of May 1982.

For the Nuclear Regulatory Commission,
Harold R. Denton,
Director, Office of Nuclear Reactor
Regulation.

[FR Doc. 82-12953 Filed 5-11-82; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co. (Monticello Nuclear Generating Plant); Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating License No. DPR-22 which authorizes operation of the Monticello Nuclear Generating Plant. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is comprised of a boiling water reactor at the licensee's site located in Wright County, Minnesota.

II

On November 19, 1980, the Commission published a revised § 10 CFR 50.48 and a new Appendix R to 10 CFR 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48(c) and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies

requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G., is the subject of this Exemption. Subsection III.G. specifies detailed requirements for fire protection of the equipment used for safe shutdown by means of separation and barriers (III.G.2). If the requirements for separation and barriers could not be met in an area, alternative safe shutdown capability, independent of that area and equipment in that area, was required (III.G.3).

Section 50.48(c) required completion of all modifications to meet the provisions of Appendix R within a specified time from the effective date of this fire protection rule, February 17, 1981, except for modifications to provide alternative safe shutdown capability. These latter modifications (III.G.3) require NRC review and approval. Hence, § 50.48(c) requires their completion within a certain time after NRC approval. The date for submittal of design descriptions of any modifications to provide alternative safe shutdown capability was specified as March 19, 1981.

By letter dated March 13, 1981, as amended December 3, 1981, and February 15, 1982, Northern States Power Company requested exemptions from 10 CFR 50.48(c) with respect to the requirements of Section III.G. of Appendix R as follows:

- (1) Extend from March 19, 1981, to July 1, 1982, the date for submittal of plans and schedules to achieve compliance with III.G.2 required by § 50.48(c)(5);
- (2) Extend from March 19, 1981, to July 1, 1982, the date for filing additional exemptions from III.G. pursuant to § 50.12(a) and 50.48(c)(6);
- (3) Extend from March 19, 1981, to July 1, 1982, the date for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3, if such are necessary; and
- (4) Extend from February 17, 1981, to June 1, 1982, the date from which the installation schedules established in § 50.48(c)(2) and (3) are calculated.

When this Fire Protection Rule was approved by the Commission, it was understood that the time required for each licensee to reexamine those previously approved configurations at its plant to determine whether they meet the requirements of Section III.G. of Appendix R to 10 CFR 50 was not well known and would vary depending upon the degree of conformance. For each item of nonconformance that was found, a fire hazards analysis had to be performed to determine whether the existing configuration provided

sufficient fire protection. If it did, a basis had to be formulated for an exemption request. If it did not, modifications to either meet the requirements of Appendix R or to provide some other acceptable configuration, that could be justified for an exemption, had to be designed. Where fire protection features alone could not ensure protection of safe shutdown capability, alternative safe shutdown capability had to be designed as required by Section III.G.3. of Appendix R. Depending upon the extensiveness and number of the areas involved, the time required for this reexamination, reanalysis and redesign could vary from a few months to a year or more. The Commission decided, however, to require one, short-term date for all licensees in the interest of ensuring a best-effort, expedited completion of compliance with the Fire Protection Rule, recognizing that there would be a number of licensees who could not meet these time restraints but who could then request appropriate relief through the exemption process. Licensees for 44 of the 72 plants to which Appendix R applies (plants with an operating license issued prior to January 1, 1979) have requested such schedular relief.

The licensees for the remaining 28 plants made submittals to meet the schedular requirements of § 50.48(c). All of these submittals, however, were deficient in some respects. In general, much of the information requested in a generic letter (81-12) dated February 20, 1981, to the licensees of all 72 plants was not provided. Therefore, additional time is being used to complete those submittals.

III

Prior to the issuance of Appendix R, the Monticello Nuclear Generating Plant had been reviewed against the criteria of Appendix A to the Branch Technical Position 9.5-1 (BTP 9.5-1). The BTP 9.5-1 was developed to resolve the lessons learned from the fire at the Browns Ferry Nuclear Plant. It is broader in scope than Appendix R, formed the nucleus of the criteria developed further in Appendix R and in its present, revised form constitutes the section of the Standard Review Plan used for the review of applications for construction permits and operating licenses of new plants. The review was completed by the NRC staff and its fire protection consultants and a Fire Protection Safety Evaluation (FPSER) was issued. A few items remained unresolved. Further discourse between the licensee and the NRC staff resulted in resolution of these items as documented in one supplement

to the FPSER. The FPSER and its supplement supported the issuance of amendments to the operating license of the Monticello Plant¹ which required modifications to be made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. All of these modifications have been completed. Therefore, the Monticello Nuclear Generating Plant has been upgraded to a high degree of fire protection already and the extensive reassessment involved in this request for additional time is to quantify, in detail, the differences between what was recently approved and the specific requirements of Section III.G to Appendix R of 10 CFR 50.

As mentioned earlier there are 14 other subsections which contain criteria for other aspects of fire protection features. One of these, Section III.L., provides the criteria for Alternative and Dedicated Safe Shutdown Capability and thus affects the final reassessment and redesign, if necessary, of this feature of the Monticello Plant. Nevertheless, this means that compliance with the remaining applicable sections of Appendix R have been or will be completed on or before the implementation dates required by the Fire Protection Rule.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at Monticello in conformance with the requirements of the Fire Protection Rule and is applying significant effort to complete the reassessment of any remaining modifications which might be necessary for strict conformance with Section III.G. We find that because of the already completed upgrading of these facilities, there is no undue risk to the health and safety of the public involved with continued operation until the completion of this reassessment on July 1, 1982. Therefore, an exemption should be granted to allow such time for completion. However, because we have found that most submittals of this reanalysis to date from other licensees have not been complete, that is, not all of the information requested by Generic Letter 81-12 dated February 20, 1981, was provided, we are adding a condition to this Exemption that requires all such

information to be submitted by the date granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemptions with respect to the requirements of Section III.G. of Appendix R to 10 CFR Part 50:

(1) The date, March 19, 1981, for submittal of plans and schedules to achieve compliance as required by § 50.48(c)(5) is extended to July 1, 1982;

(2) The date, March 19, 1981, for filing exemption requests pursuant to § 50.48(c)(6) which includes a tolling provision is extended to July 1, 1982;

(3) The date, March 19, 1981, for submittal of design descriptions of alternative or dedicated shutdown systems to comply with Section III.G.3 as required by § 50.48(c)(5) is extended to July 1, 1982; and

(4) The date, February 17, 1981, from which the installation schedules established in § 50.48(c)(2) and (3) are calculated is extended to June 1, 1982.

Provided the following conditions are met:

(1) Requests for exemption pursuant to § 50.48(c)(6) must include:

(a) A concise statement of the extent of the exemption;

(b) A concise description of the proposed alternative design features related to assuring post-fire shutdown capability; and

(c) A sound technical basis that justifies the proposed alternative in terms of protection afforded to post-fire shutdown capability, degree of enhancement in fire safety by full compliance with III.G requirements, or the detriment to plant safety incurred by full compliance with III.G. A simple statement that the feature for which the exemption is requested was previously approved by the staff is not sufficient. A simple assertion that in the licensee's judgment the feature for which the exemption is requested is adequate fire protection is not sufficient.

(2) The design descriptions of alternative or dedicated shutdown systems to comply with Subsection III.G.3., as required by § 50.48(c)(5) shall include a point-by-point response to each item in Section 8 of Enclosure 1 to generic letter 81-12 dated February 20, 1981, and to each item in enclosure 2 to generic letter 81-12 dated February 20, 1981.

If the licensee does not meet the above conditions, the licensee will be found in violation of 10 CFR 50.48(c) even though the submittal may be made within the time limit granted by the exemption. If such a violation occurs, imposition of a civil penalty will be considered under Section 234 of the Atomic Energy Act, as amended. Such a violation will be a continuing one beginning with the date set in the exemption for submittal and terminating when all inadequacies are corrected.

A delay in the determination of inadequacy by the staff, caused by the workload associated with reviewing all of the submittals falling due near the same time, will not relieve the licensee of the responsibility for completeness of the submittal nor will such delay cause any penalty that may be imposed to be mitigated.

The NRC staff has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland, this 4th day of May 1982.

For the Nuclear Regulatory Commission.

Harold R. Denton,
Director, Office of Nuclear Reactor
Regulation.

[FR Doc. 82-12954 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Facilities or Materials; Applications for Licenses To Export

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before June 11, 1982. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or

¹ Monticello—Operating License DPR-22, Amendment 41 supported by FPSER issued August 29, 1979 to Provisional Operating License No. DPR-22, Amendment 1 supported by Supplement 1 to FPSER issued February 12, 1981 to Facility Operating License No. DPR-22.

utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient

nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 5th day of May, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.
James V. Zimmerman,
Assistant Director, Export/Import and
International Safeguards, Office of
International Programs.

FEDERAL REGISTER (EXPORT)

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Mitsui & Co., Apr. 26, 1982, Apr. 29, 1982, XSNMO1955...	3.95% enriched uranium.....	17,414	625	Reload fuel for Hamaoka, Unit 2.....	Japan.

[FR Doc. 82-12955 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

Availability of Subscription Service for the "NRC Public Document Room (PDR) Daily Accessions List"

In support of the U.S. Government's policy of cost recovery for publications produced by Federal Agencies, the U.S. Nuclear Regulatory Commission (NRC) became a consigned Sales Agent for the U.S. Government Printing Office in August 1979. Since that time, several NRC scheduled publications have become part of the Sales Program. Notice is hereby given that the "NRC Public Document Room (PDR) Daily Accessions List" will become part of the Sales Program effective June 1, 1982. The list announces and describes all NRC documents issued for public availability and placed in the PDR except engineering drawings and reference materials.

The intent of this effort is not to discourage public interest in the "NRC Public Document Room (PDR) Daily Accessions List," but to assure that the lists are being utilized in a manner that is both efficient and cost effective.

Copies of the "NRC Public Document Room (PDR) Daily Accessions List" will continue to be placed in the NRC Public Document Room, 1717 H Street NW, Washington, D.C. 20555 for inspection and for copying at a fee.

The paid subscription service for the "NRC Public Document Room (PDR) Daily Accessions List" in hard copy with consist of 260 issues and will cost \$730.00.

Current subscribers to the free service who wish to continue receiving the "NRC Public Document Room (PDR) Daily Accessions List" in hard copy without interruption in service should submit their requests, with payment, to the Superintendent of Documents, U.S. Government Printing Office, ATTN: NRC Subscriptions, Washington, D.C. 20402. GPO Deposit Account holders or persons wishing to charge Master or VISA accounts may order the

subscription service by calling the NRC/GPO Sales Office at (301) 492-9530.

The "NRC Public Document Room (PDR) Daily Accessions List" will also be available on a paid subscription basis in 24X microfiche form. Interested persons should contact the NRC Sales Manager at (301) 492-9530 for details on pricing and availability.

Any questions concerning this subscription service may be directed to R. Stephen Scott, Chief, Document Management Branch, Division of Technical Information and Document Control, Washington, D.C. 20555 at (301) 492-8585.

Dated at Bethesda, Maryland, this 5th day of May, 1982.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Acting Director, Office of Administration.

[FR Doc. 82-12956 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 OL, 50-455 OL]

Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2); Order

May 6, 1982.

Oral argument on the appeal of intervenor The Rockford League of Women Voters from the October 27, 1981 and January 27, 1982 orders of the Licensing Board has been rescheduled from 2:00 P.M. on Wednesday, May 26, 1982 to 10:00 A.M. on Thursday, May 13 in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland. Each side is allotted a total of 50 minutes.

Each party is to notify the Secretary to this Board, in writing, to be received no later than Tuesday, May 11, 1982, of the name of the person who will present argument on its behalf.

It is so ordered.

For the Appeal Board.

C. Jean Shoemaker,
Secretary to the Appeal Board.

[FR Doc. 82-12957 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-329 CP 50-330 CP]

Consumers Power Co. (Midland Plant, Units 1 and 2); Order

May 6, 1982.

Because counsel for intervenor Saginaw Valley Nuclear Study Group has other commitments on May 26, oral argument in this case remains scheduled for 2:00 p.m., Thursday, May 13, 1982, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

It is so ordered.

For the Appeal Board.

C. Jean Shoemaker,
Secretary to the Appeal Board.

[FR Doc. 82-12958 Filed 5-11-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of the Services Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish the Services Policy Advisory Committee. This Committee will be rechartered pursuant to section 135(c)(1) of the Trade Act of 1974 (19 U.S.C. 2155(c)(1)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); Section 4(d) of Executive Order No. 11846, March 27, 1975; and Executive Order No. 121888.

The Services Committee will advise, consult with, and make recommendations to the U.S. Trade Representative and the Secretary of Agriculture, the Secretary of Commerce,

and the Secretary of Labor on policy issues related to trade in services.

The Committee will meet at irregular intervals at the call of the U.S. Trade Representative. The frequency of committee meetings will be approximately three or four times per year, depending upon the needs of the U.S. Trade Representative.

Representatives from the private sector wishing further information or to be considered for appointment to serve on the committee should contact: the United States Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Room 121, Washington, D.C. 20506, (202) 395-6120.

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 82-12882 Filed 5-11-82; 8:45 am]

BILLING CODE 3190-01-M

Trade Restrictions—Receipt of Petition Regarding Machine Tools from Japan

On May 3, 1982 the Office of the United States Trade Representative (USTR) received a petition filed pursuant to Section 103 of the Revenue Act of 1971 (26 U.S.C. 48(a)(7)(D)) by Houdaille Industries, Inc. of Ft. Lauderdale, Florida.

Section 103 of the Revenue Act of 1971 authorizes the President to deny the application of the investment tax credit on any article or class of articles manufactured or produced in a foreign country upon making a determination that such country maintains non-tariff trade restrictions which substantially burden U.S. commerce in a manner inconsistent with provisions of trade agreements or engages in discriminatory or other acts (including the tolerance of international cartels) or policies unjustifiably restricting U.S. commerce.

The petition alleges that the Government of Japan instigated the formation of a machine tool cartel and continues to shield the cartel members from competition by sanctioning market allocation and other anticompetitive agreements and practices. It is further alleged that the Government of Japan has promoted the development of the cartel by providing it with tax advantages, concessionary loans, research grants and other direct and indirect subsidies. The petitioner claims that U.S. commerce has been unjustifiably restricted as a result of these practices.

The petitioner has requested that the President exercise his authority under Section 103 by immediately suspending for an indefinite period the investment tax credit for Japanese-made

numerically-controlled machining centers and numerically-controlled punching machines. The petitioner further requests that the President provide for a review of the circumstances giving rise to the Presidential action at the end of five years from the date on which the action becomes effective.

Copies of the petition are available for purchase at a cost of \$15 per copy payable by check only to the U.S. Treasurer or for viewing by interested parties in the Office of the General Counsel, Room 223, Office of the United States Trade Representative, 600 17th St., NW., Washington, D.C. 20506.

The Office of the USTR will coordinate an interagency review of the petition so that the United States Trade Representative may make a recommendation to the President, with the advice of the Trade Policy Committee, on what action, if any, the President should take with respect to the petition. In order to assist in this process interested parties are invited to submit their comments in writing on any issue raised in the petition. Submissions should be legibly typed, printed or duplicated and by filed, together with 20 copies, no later than June 30, 1982. The Office of the USTR will accord business confidential treatment, upon request, in the manner provided for in 15 CFR 2006.15. Submissions should be directed to Jeanne S. Archibald, Assistant General Counsel, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, D.C. 20506.

Donald E. deKieffer,
General Counsel.

[FR Doc. 82-12880 Filed 5-11-82; 8:45 am]

BILLING CODE 3190-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer who Contributes to a Multiemployer Plan: Almac Plastics, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted Almac Plastics, Inc. an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, in connection with its purchase of assets of Camla, Inc. A notice of the request for exemption from

the requirement was published on March 4, 1982 (47 FR 9310). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

FOR FURTHER INFORMATION CONTACT:

James M. Graham, Office of the Executive Director, Policy and Planning (140), 2020 K Street, NW., Washington, D.C. 20006, (202) 254-4862.

SUPPLEMENTARY INFORMATION:

Background

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364, 94 Stat. 1208 (the "Multiemployer Act") became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974 ("ERISA"). As a result of the Multiemployer Act, an employer that withdraws or partially withdraws from a multiemployer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits. Section 4204(a)(1) of ERISA, 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets, (46 FR 46127, September 17, 1981), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with

the least practicable intrusion into normal business transactions.

Section 4204(c) requires the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the Federal Register, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

Decision

On March 4, 1982 (47 FR 9310), the PBGC published a notice of the pendency of a request from Almac Plastics, Inc. ("New Almac") to waive the bond/escrow requirement of section 4204(a)(1)(B) of ERISA, in connection with the purchase by New Almac on August 13, 1981 of the operating assets of Camla, Inc. ("Camla"). No comments were received in response to the notice.

Camla contributed to the Union Mutual Fund Pension Plan (the "Plan"). According to New Almac's request for an exemption, New Almac has agreed to contribute to the Plan for substantially the same number of contribution base units for which Camla had an obligation to contribute.

Prior to the sale, Camla's potential withdrawal liability to the Plan had been calculated to be \$131,000. The amount of the bond or escrow required under section 4204(a)(1)(B) is \$115,957 (the contributions required to be made for the plan year ending December 31, 1980).

New Almac is a wholly-owned subsidiary of Laird, Inc., which is, in turn, a wholly-owned subsidiary of Laird Group, Ltd., a foreign corporation. Prior to the sale, Laird Inc. had two subsidiaries located within the United States. The book value of net current assets and dates of those figures for each of the subsidiaries is as follows:

	Net current assets (book value)
N.Y. Twist Drill Corp.....	12,175,089 (6/80)
Amesbury, Inc.....	2,050,866 (3/81)

Thus, prior to the sale, the U.S. subsidiaries had total combined net current assets of approximately \$14 million. In addition, New Almac (the new subsidiary of Laird Inc.) purchased the operating assets of Camla, which prior to the sale had a net current book value of approximately \$10.9 million.

Based on these facts, PBGC has determined that an exemption from the bond/escrow requirement would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore,

PBGC has granted New Almac's request for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, D.C., on this 6th day of May 1982.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 82-12834 Filed 5-11-82; 8:45 am]

BILLING CODE 7708-01-M

Pendency of Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: Flushing Shirt Manufacturing Company, Inc.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Flushing Shirt Manufacturing Company, Inc. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act in connection with that company's purchase of the assets of Flushing Shirt Manufacturing Company, Inc. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years beginning after the sale. The PBGC is authorized to grant exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATES: Comments must be submitted on or before June 28, 1982.

ADDRESSES: All written comments (at least three copies) should be addressed to: Assistant Executive Director for Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

The request for exemption and the comments received will be available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

James M. Graham, Office of the Executive Director, Policy and Planning (140), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4862. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Background

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364, 94 Stat. 1208 (the "Multiemployer Act") became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001 *et seq.* As a result of the Multiemployer Act, an employer that withdraws, or partially withdraws, from a multiemployer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits. The withdrawal liability rules generally apply to withdrawals occurring after April 28, 1980.

Section 4204 of ERISA, 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or

fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the sale-contract requirement of section 4204(a)(1)(C). The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) or (C) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets, (46 FR 46127, September 17, 1981), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the *Federal Register*, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the purchaser, Flushing Shirt Manufacturing Company, Inc. ("New Flushing"), for an exemption from the requirement of section 4204(a)(1)(B) of ERISA. In the request, New Flushing represents, among other things, that:

1. On November 30, 1981, New Flushing purchased the assets of Flushing Shirt Manufacturing Company, Inc., now known as FSMC Uniform Manufacturing, Inc. (FSMC). The agreement of sale was effective as of November 1, 1981.

2. New Flushing has assumed FSMC's responsibilities under a collective bargaining agreement with the Amalgamated Cotton Garment & Textile Workers Union, which obligated FSMC to contribute to the Amalgamated Cotton Garment & Allied Industries Fund (the "Fund"). The agreement of sale provides that, if New Flushing withdraws from the Fund within the first

five plan years beginning after the sale and fails to pay any of its liability to the Fund, FSMC shall be secondarily liable for the liability it (FSMC) would have had but for section 4204. According to the Fund, FSMC's potential withdrawal liability to the Fund had been calculated to be \$503,048.26.

3. The amount of the bond or escrow required under section 4204(a)(1)(B) is \$154,482.08 (the amount of FSMC's required annual contribution to the Fund for plan year 1980).

4. New Flushing is a member of a controlled group of corporations known as TFB Holding Corporation ("TFB"). TFB was formed on January 30, 1981. TFB's audited consolidated financial statement for calendar year 1981 shows net income of approximately \$2.1 million and net tangible assets as of December 31, 1981 of approximately \$1.7 million.

5. FSMC has indicated its intention that section 4204 should apply to the sale.

6. A complete copy of this request has been sent to the Fund and the collective bargaining representative of the seller's former employees by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending exemption to the above address, on or before June 28, 1982. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 6th day of May 1982.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc 82-12835 Filed 5-11-82; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-18713; File No. 4-208]

Intermarket Trading System

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of final amendments to national market system plan.

SUMMARY: The Commission is adopting amendments to the plan governing the operation of the Intermarket Trading System ("ITS") that are necessary to include the National Association of Securities Dealers, Inc. ("NASD") as an ITS participant to allow for implementation of the automated

interface between the ITS and the NASD previously ordered by the Commission.

EFFECTIVE DATE: May 17, 1982.

FOR FURTHER INFORMATION CONTACT:

Michael J. Simon, (202) 272-2889, or Robert Colby, (202) 272-2888, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting final amendments to the "Plan for the purpose of creating and operating an Intermarket Communication Linkage" filed with and approved by the Commission ("ITS Plan"), that would provide for the inclusion of the NASD in ITS.¹ These amendments, which were published for comment by the Commission on its own initiative pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), are a prerequisite to implementation of the automated interface previously ordered by the Commission.

I. Introduction

On April 21, 1981, the Commission issued an order ("linkage order")² requiring the current participants in the ITS and the NASD, among other things, (i) to implement, by March 1, 1982, an automated interface between the ITS and the NASD's NASDAQ system, as enhanced to include, among other things, an order routing and automatic execution capability;³ and (ii) to submit to the Commission, on or before November 1, 1981, proposed amendments to the ITS Plan reflecting the inclusion of the NASD as an ITS participant. The Commission indicated in the linkage order that it considers the immediate implementation of an automated interface between over-the-counter ("OTC") and exchange markets in listed securities to be a critical event in the development of the national market system. In particular, the Commission indicated that this

¹ The ITS is an intermarket routing system operated jointly by certain national securities exchanges, and authorized by the Commission, on a provisional basis, as a national market system facility pursuant to 11A(a)(3)(B) of the Securities Exchange Act of 1934. The current participants in ITS are the New York Stock Exchange, Inc., the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Midwest Stock Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

² Securities Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856.

³ The NASD's enhanced NASDAQ system is referred to as the Computer Assisted Execution System, or "CAES."

interface, which will provide for the first time an efficient means of routing orders between exchange and OTC markets, is essential to the full development of the Commission's experiment in trading securities in an environment free from off-board trading restrictions, pursuant to Rule 19c-3 under the Act, which permits exchange members to make off-board markets in most securities listed on an exchange since April 1979.⁴

On March 4, 1982, the Commission issued an order deferring the implementation date of the interface from March 1, 1982 to May 1, 1982 for two reasons.⁵ First, while technical preparations for the interface generally had proceeded smoothly, it appeared that approximately two more months of testing would be necessary before the interface could be implemented. Second, the ITS participants and the NASD had failed to submit to the Commission amendments to the ITS Plan to provide for the inclusion of the NASD in the ITS. In order to encourage the parties to reach agreement on the ITS Plan amendments, and as a necessary step to allow the Commission to adopt the Plan amendments by the May 1, 1982, implementation date on its own in the event the parties were unable to reach agreement, the Commission published for public comment proposed amendments to the ITS Plan to provide for the NASD's inclusion in ITS ("proposal release").⁶

The ITS Plan amendments proposed by the Commission generally reflected the ITS draft plan amendments prepared by the ITS participants and the NASD wherever the parties had reached agreement. In addition, the Commission included provisions reflecting the ITS participant's and NASD's agreement to defer resolution of a number of issues until after the initial six month pilot phase of the interface. Finally, the Commission proposed its own resolution

to the few remaining issues where the parties were unable to agree on either a resolution or deferral of the issue. In response to the Commission's request for comment on the proposed ITS Plan amendments, the Commission received letters from the NASD,⁷ the ITS participants,⁸ one broker-dealer,⁹ and one industry organization.¹⁰

Discussion

Since the time the Commission published its proposed ITS Plan Amendments for public comment, the ITS Participants and the NASD have continued their discussions in an attempt to reach agreement on the outstanding issues.¹¹ Unfortunately,

⁷ Letter dated March 30, 1982, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

⁸ Letter dated April 5, 1982, from Kenneth I. Rosenblum, Chairman, ITS Operating Committee, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission. The Commission also received a separate letter from the New York Stock Exchange ("NYSE") which articulates that exchange's concerns regarding internalization. See letter dated April 5, 1982, from William M. Batten, Chairman and Chief Executive Officer, NYSE, to the Commission.

⁹ Letter dated March 31, 1982, from H. C. Piper, President, and Kenneth J. Wessels, Senior Vice President, Piper Jaffray and Hopwood, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

¹⁰ Letter dated March 24, 1982, from Jeremiah A. Mullins, Chairman, and Morton N. Weiss, President, National Security Traders Association, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

¹¹ In addition to the negotiations concerning the ITS Plan amendments, parallel discussions regarding the possible promulgation of a rule concerning the internalization of customer order flow by exchange member firms have been continuing. (For a further discussion of internalization and these deliberations see the proposal release, 47 FR at 10660-1). Although these negotiations have not yet resulted in the submission of a rule to the Commission which has total industry backing, significant progress has been made. First, a special committee established by the Securities Industry Association ("SIA") to study the internalization area has reached an understanding on principles which it believes should govern rules addressing internalization in all markets, if it is determined that such rules are necessary. Second, outside counsel retained by the NYSE have prepared a draft rule addressing internalization. As the Commission has stated in the past (see e.g., the proposal release, 47 FR at 10660-1), while this issue is not one on which agreement must be reached prior to implementation of the interface, it supports industry efforts to address internalization concerns. As part of its support for industry efforts in this area, the Commission has instructed its staff to prepare a release (i) detailing the status of the discussions on internalization, (ii) requesting further comment on whether there should be any internalization rule at all and (iii) proposing alternative Commission rules based on the NYSE draft rule and variations on the SIA committee principles. The Commission expects that this release, which it will consider the week of May 10, 1982, will help focus industry attention on these significant steps taken to address the internalization area and will foster continued discussions on the

however, the parties have not been completely successful and, therefore, have not submitted their own amendments to the Commission. Accordingly, in order to allow the interface to be implemented at the earliest possible date, the Commission is adopting its proposed amendments to the ITS Plan in substantially the same form as proposed for comment.¹² As discussed, the majority of the amendments are non-controversial and have been agreed upon by the parties or reflect the parties' decision to defer resolution of certain issues until after the pilot phase of the interface.¹³ The

subject. The Commission has also instructed its staff to make every effort to actively facilitate industry consideration of a mechanism which will enhance inter-market order exposure in the context of the Rule 19c-3 experiment.

The Commission also notes that in the recent submission by the NYSE further articulating concerns regarding internalization (note 8, *supra*), the NYSE appears to present the argument that both the Commission and Congress historically have placed internalization at the forefront of national market system concerns and believed that such concerns should be addressed before removing exchange restrictions on off-board principal transactions. The Commission believes that it is important to emphasize that, while the Commission and Congress indeed have recognized the potential internalization concerns that may be attendant to lifting restrictions on off-board principal transactions, both consistently recognized the concerns raised by the anti-competitive effects of those restrictions. For this reason, the Commission has recognized consistently that potential internalization concerns are only one factor which must be considered when the Commission exercises its statutory authority to facilitate the development of a national market system. As a result, the Commission must balance any benefits obtained by increased order exposure against any resulting adverse effects on efficient executions of transactions and competition among brokers and dealers, exchange markets and markets other than exchanges. The Commission repeatedly has determined that, on balance, the increased potential for competition in market making that will result from the lessening of off-board trading restrictions outweigh the speculative concerns over internalization in the limited context of the Rule 19c-3 experiment and the subject market linkage. See, e.g., the Rule 19c-3 Adoption Release, 45 FR at 41129; Linkage Order 46 FR at 23860; and the Proposal Release, 47 FR at 10660-1.

¹² The Commission has made a number of changes to its draft amendments to reflect all the amendments agreed upon by the ITS participants and the NASD. These areas generally are technical and include the addition of two new definitions, various changes to the ITS pre-opening application and the financial aspects of the interface. With respect to one of the definitions, the "NASD Commencement Date," rather than specifying a particular date as suggested by the parties, the amendments, as adopted, refer to the date established by the linkage order, as amended.

¹³ In the ITS participants' comment letter (note 8, *supra*), they emphasize the continued importance to them of one of the deferred issues. Specifically, the ITS participants believe it is necessary that the NASD eventually agree to require market makers to report trades to the consolidated tape at the same price they confirm transactions to their customers. The ITS participants apparently believe that such a requirement, through customer monitoring of trade

⁴ Specifically, Rule 19c-3 (17 CFR 240.19c-3) removed exchange off-board trading restrictions which prohibited exchange member firms from making markets in securities listed on the exchange other than on exchange premises, with respect to any security reported in the consolidated transaction system ("consolidated system"): (1) Which was not traded on an exchange prior to April 26, 1979, or (2) which was traded on an exchange on April 26, 1979 but which ceased to be traded on an exchange for any period of time thereafter ("Rule 19c-3 Security"). See Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41124 ("Rule 19c-3 Adoption Release"). A more complete discussion of the Commission's previous statements regarding the need for an efficient linkage between the exchange and the OTC markets is contained in Securities Exchange Act Release No. 17516 (February 5, 1981), 46 FR 12379.

⁵ Securities Exchange Act Release No. 18537 (March 4, 1982), 47 FR 10682.

⁶ Securities Exchange Act Release No. 18536 (March 4, 1982), 47 FR 10658.

areas where the parties have not reached agreement, and where the Commission has resolved the outstanding issues, are discussed below.

1. *ITS Order Entry Procedures.* As discussed in the proposal release, the ITS participants proposed including a provision in the ITS Plan which would specify the manner in which orders can be entered into the ITS system by CAES market makers, reflecting the manual order entry process presently planned for use by CAES when the interface becomes operational. The ITS participants are concerned that, unless access to ITS is strictly limited to CAES market makers, other broker-dealers may use the ITS as an alternative to exchange membership by routing substantial numbers of agency orders through the CAES-ITS interface to the exchange floors of ITS participants, thus avoiding exchange transaction fees and the costs of exchange membership. The ITS participants did, however, propose language in the plan which would commit them to continue discussions with the NASD during the six-month pilot period of whether the ITS Plan should limit the manner in which commitments to trade are originated in the CAES markets.

On the other hand, the NASD has objected to so limiting the manner of

entering CAES orders into ITS. Although the NASD has not indicated any immediate plans to alter the CAES-ITS order entry process, the NASD is concerned that describing the initial order entry process used by CAES in the ITS Plan will make amendment of the Plan necessary before it can enhance this manual entry process in the future.

In proposing its amendments for comment, the Commission, while proposing the limiting language suggested by the ITS participants, also recognized that for CAES to operate at maximum efficiency, its manual ITS order entry process must be enhanced so that CAES orders are automatically entered into ITS, without the intervention of a CAES market maker, when an ITS market displays a quotation superior to that available in CAES. Indeed, the Commission stated that an automated order entry procedure would be an efficient method of preventing CAES trade-throughs of superior ITS quotations,¹⁴ and may be essential in order for CAES to draw the order flow necessary to attract OTC market making interest, and to compete effectively with exchange markets in listed securities. In light of these concerns the Commission also proposed the possibilities of (i) limiting the order entry restrictions to the pilot phase of the interface; and (ii) adding language to the plan allowing the NASD to enhance CAES only to the extent necessary to allow the system to provide an automated order entry process which would redirect orders entered into CAES to a superior quotation in another ITS market.

The NASD, in its comment letter, stated that the language proposed by the Commission to allow the NASD to develop an automated order entry process is "entirely acceptable." The ITS participants, on the other hand, continue to believe that (i) the ITS Plan only should detail exactly how the plan's applications currently operate and that (ii) an automated interface might be used as an order-routing mechanism by users of CAES enabling those users to avoid floor brokerage and transaction fees and the need for exchange membership. While the ITS participants believe that it may indeed be possible to devise plan language that both would allow ITS/CAES market makers to avoid trade-throughs efficiently and would be responsive to their access concerns, they urge the

Commission to allow the parties to pursue this issue during the pilot phase of the interface rather than have the Commission adopt its own plan amendments on this issue now.

The Commission has determined that while it continues to believe that it is important for the NASD to develop an automated order entry system that would avoid trade-throughs as soon as possible, it will not take any action on specific ways to address this issue now. Rather, in adopting the final amendments to the ITS Plan, the Commission has limited the manual order entry restrictions to the pilot phase of the interface and has stated that the manner in which ITS/CAES market makers can input orders into ITS after the pilot phase remains unresolved and will be the subject of continued discussions. The Commission emphasizes, however, that it continues to believe that this order entry procedure can be made more efficient, and that it intends to address such enhancements at the end of the pilot phase in the event the parties are unable to reach agreement on the issue.

2. *Trade-through rules.* All ITS participating exchanges have rules to help ensure that members of their exchanges do not trade-through other participating ITS markets. The NASD and the ITS participants generally have agreed that similar trade-through principles should be applicable to the CAES market in securities traded through the interface. Furthermore, in the proposal release the Commission emphasized that it expected the NASD to adopt a trade-through rule that contained the basic protection provided by the exchanges' rules. The Commission's proposed amendments to the ITS Plan contained the requirement that the NASD's trade-through rule apply the concepts of the prototype exchange rules "in an appropriate fashion" to trades of ITS/CAES market makers. Subsequently, the ITS participants proposed language that would have included in the plan more specific requirements concerning the NASD's rule.

While the Commission recognizes the need for consistency regarding the various markets' trade-through rules, the Commission does not believe that it is necessary or appropriate for it to adopt plan amendments which would detail the provisions of the NASD's rules with the specificity suggested by the ITS participants. Instead, the Commission believes that the proposed language requiring the NASD's rules to apply the trade-through concepts "in an

confirmations, will impose a discipline on market makers to ensure that they report trades at the true wholesale price. While, as discussed in the proposal release (pp. 19-24), the Commission encourages further discussion of this issue during the pilot phase of the interface, the Commission continues to believe that concerns about accurate trade reporting—of either block or retail-sized transactions—can effectively be addressed through surveillance. The NASD, as part of its monitoring of Rule 19c-3 trading, already has instituted a surveillance program which the Commission believes carefully monitors the reporting of OTC retail transactions in Rule 19c-3 transactions. (See A Monitoring Report on the Operation and Effects of Rule 19c-3 Under the Securities Exchange Act of 1934, Securities Exchange Act Release No. 18062 (August 25, 1981) at 32-36, which indicated that 19c-3 market makers were reporting retail-sized 19c-3 transactions accurately in substantially all instances.) The Commission also believes that the NASD also could provide effective surveillance with respect to block transactions, and the NASD has agreed to institute such a program. The Commission expects that this inspection effort will entail examining a large percentage of block trades to determine if they have been reported accurately at the wholesale price. At a minimum, this examination should compare the difference between the reported price of the block and the net price confirmed to the customer to determine if the reported price was adjusted to avoid the trade-through rule. The Commission believes that such surveillance efforts may prove more effective in policing trade reports than the notion that retail customers and institutions will focus on the reported price and markup rather than primarily on the net price received. Moreover, to the extent that there was agreement between the institution and the market maker over the reported price, NASD surveillance would appear to be the only useful detection tool available.

¹⁴ A "trade-through" occurs when a trade is executed in one market center at a price inferior to that available in another market center. For a further discussion of this issue, see the proposal release, 47 FR at 10661-2.

appropriate fashion" provides a sufficient assurance of consistency.

In this connection, the Commission notes that on May 4, 1982, the NASD submitted to the Commission its proposed trade-through rule. That rule provides the same general protections of the exchange participants' rules by providing assurance that, in the event of a trade-through complaint, the complaining market maker will be assured that his quotation will be satisfied in full or that the transaction will be broken. The only difference between the rules concerns the methods which should be available to two ITS/CAES market makers dealing as principal to correct trade-throughs.¹⁵ Specifically, the exchange trade-through rules require two members dealing as principal to break a trade-through if a timely complaint is received, while the NASD's trade-through rule, as submitted to the Commission, would provide two ITS/CAES market makers dealing as principal generally the same alternative remedies available with respect to agency transactions, i.e., (i) to break the trade; (ii) to adjust the trade to price which would not constitute a trade-through; or (iii) to take out the quotation traded through, if a timely complaint of a trade-through is received.

The Commission understands that the ITS participants have raised concerns that giving two ITS/CAES market makers the latter two options decreases the incentives to avoid trading through in the first instance.¹⁶ While the

Commission recognizes that concern, the Commission believes that the NASD's trade-through rule both is in conformity with the requirements of the Act, and as required by the ITS Plan, applies "in an appropriate fashion" the concepts of the prototype exchange rules contained in the exhibits to the ITS Plan. The Commission believes that the NASD's rule provides all the basic protections afforded by the exchange participants' rules and that the one difference between the rules can be justified by the automatic execution capability in CAES. Specifically, on an exchange, both parties to a trade always should be aware of superior prices available in other markets before executing a transaction, and it thus seems appropriate to require a trade-through by two members acting as principal; to be broken. On the other hand, in CAES a trade-through may occur through no fault of a market maker, who, for valid business reasons, often may be disseminating a quotation inferior to the best ITS quote, with a trade-through resulting only when a CAES order entry firm executes against that quotation. In such a situation, it does not seem inappropriate to give the parties additional methods to remedy the trade-through.

In light of the foregoing, the Commission today is both publishing and approving on an accelerated basis a temporary NASD trade-through rule for six months.¹⁷ During those six months the Commission will monitor the effects of the NASD's trade-through rule to determine if the rule should be approved on a permanent basis in its current form, or whether amendments to the rule are necessary.

3. Short Sale Commitments. As discussed in the proposal release,¹⁸ CAES presently does not have the capability to send or receive orders designated "short." The NASD is committed to remedy this problem as soon as possible and anticipates that by the end of the pilot phase it will enhance CAES not only to accept commitments designated "short," but also to allow the system to check those commitments against the last sale to determine if valid executions in conformity with the short sale rule would result. The Commission believes that such a system enhancement is the best method to address this problem.

During the pilot phase of the interface, before the NASD enhances CAES to

accept short commitments, the parties originally proposed to prohibit the sending of short commitments through the interface. The Commission, in proposed ITS Plan Amendments, however, would have provided an exception from the short designation requirements of the ITS plan with respect to commitments to sell short sent through the ITS-CAES interface. Consistent with that approach, the Commission indicated that it would instruct its staff to provide the ITS participants and the NASD with interpretive relief from the designation requirement of Rule 10a-1 and from any inadvertent short sale violations resulting from a market change occurring after the commitment had been sent. The Commission indicated that it believed that permitting unmarked short orders to be routed through the interface from an exchange to CAES or from CAES to an exchange did not raise the potential manipulative concerns which Rule 10a-1 was intended to address. In particular the Commission suggested that the ability to obtain either an automatic execution (through CAES) or a timely execution (through ITS) at the prevailing quotation of the destination market allows brokers to determine, before sending an order, whether the execution they will receive will violate the short sale provisions of Rule 10a-1, except in the rare instance where the receiving market center changes its quotation between the time the order is entered and the time it is executed. Finally, the Commission indicated its understanding that this exception will be eliminated once the NASD made the technical changes necessary to permit CAES to receive ITS commitments marked short.

Based on the Commission's commitment to take a no-action position on inadvertent short sale violations, the ITS participants and the NASD both supported in their comments an exception to the plan's commitment designation requirement for short orders entered into the interface as long as the execution in the receiving market, as measured by the last sale information available in the original market, would not violate (a) Rule 10a-1, or (b) in the case of a member on the floor of the American Stock Exchange ("AMEX") or the NYSE, the short sale rule as in effect on that exchange.¹⁹ Accordingly, the ITS

¹⁵ An additional issue concerns whether the quotations of all ITS/CAES market makers should be protected when a block transaction is executed in an ITS exchange market at a price inferior to such quotations. The current trade-through rules, and block applications of those rules, would protect only the inside market in CAES. While the NASD feels strongly that each ITS/CAES market maker is a separate market center and should be protected, it has determined not to pursue this issue at the current time. The Commission is sympathetic to the NASD's concerns and emphasizes its longstanding position that the ITS participants, now including the NASD, resolve the larger issue of protection of away-from-the-market interest against block transactions as quickly as possible. By taking action in this area, the ITS participants would address not only the NASD's concerns, but the wider concerns of the industry, the Commission and Congress regarding public limit order protection. The Commission would expect the parties to work to resolve this issue during the pilot phase of the interface.

¹⁶ In their comment letter, note 8, *supra*, the ITS participants also proposed amendments to the ITS Plan to provide explicit procedures to address intermarket trade-throughs. While the Commission encourages the ITS participants to formalize these procedures both in the ITS Plan and in their rules, the Commission does not believe that it is appropriate to approve these new substantive amendments at this point in the proceedings, without first publishing them for comment. Thus, while the Commission has not adopted these amendments at the current time, it encourages the

ITS participants to resubmit these amendments at a later date.

¹⁷ Securities Exchange Act Release No. 18714 (May 6, 1982).

¹⁸ Proposal Release, 47 FR at 10663.

¹⁹ The special provisions of the exception applicable to the NYSE and AMEX are necessary due to the lack of readily accessible information on those exchanges concerning the "tick" in the consolidated system. While, in its comment letter, the NASD indicated that a similar provision should be included for CAES market makers, the

Plan amendments, as adopted, continue to provide for an exception from the short designation requirements of the ITS Plan commitments sent through the ITS-CAES interface. The Commission also has instructed its staff to take a no-action position with respect to inadvertent violations of the short sale rule (i) involving unmarked ITS commitments to trade routed to CAES from an ITS exchange which would not have violated Rule 10a-1 if executed on that exchange at the time sent to CAES, and (ii) involving unmarked orders entered into the ITS-CAES interface by a CAES market maker, as long as the short sale would have been proper in the destination exchange at the time the order was entered into the interface. In addition, the Commission has instructed the staff to provide interpretive relief for the ITS participants and the NASD with respect to the Rule 10a-1(c) requirement that short orders directed through the ITS-CAES interface be identified as short.

Conclusion

The Commission has determined to adopt final amendments to the ITS Plan to provide for NASD's inclusion as a participant in the ITS in substantially the same form as those amendments were published for comment. The Commission finds that the final amendments are consistent with the Act, particularly Section 11A thereunder, and are necessary to permit the effectuation of the Commission's previous order mandating a linkage between the ITS and CAES.²⁰

Effects on Competition

Section 23(a)(2) of the Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. In issuing the linkage order, the Commission found that implementation of the automated interface would enhance market making competition by permitting OTC market makers, through the dissemination of superior quotations, to attract orders initially routed to exchange specialists. Similarly, the interface will provide an opportunity for exchange specialists to attract orders held by OTC market makers which, without an efficient linkage, may be internalized by that market maker. Because the amendments

will help lead to the implementation of the automated interface between the ITS participants and the NASD, the Commission believes that the amendments will foster competition between exchange and over-the-counter markets. In the event that any provisions of the plan do have anticompetitive effects, the Commission believes that such effects are outweighed by the benefits resulting from the linkage.

Text of ITS Plan Amendments

Pursuant to its authority under section 11A(a)(3)(B) of the Act and Rule 11Aa3-2 thereunder,²¹ the Securities and Exchange Commission hereby adopts amendments to the ITS Plan to provide for the inclusion of the NASD as a participant in the ITS as those

²¹ Section 11A(a)(3)(B) of the Act specifically authorizes the Commission, by rule or order, to authorize self-regulatory organizations to act jointly with respect to national market system matters. Rule 11Aa3-2 (the "Plan Rule") implements that section by, among other things, establishing procedures for initiating or approving amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) of the Plan Rule states that the Commission may propose amendments to an effective national market system plan by publishing the text thereof together with a statement of the purpose of the amendments. Paragraph (c)(1) requires the Commission to publish notice of any amendments initiated by the Commission and provide interested persons an opportunity to submit written comments. Paragraph (c)(2) requires the Commission to approve such amendments within specified time frames if the Commission makes the required statutory findings; paragraph (c)(2) also requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule.

The ITS Participants, in their comment letter, imply that the Commission should follow the procedures in section 19(c) of the Act in promulgating these ITS Plan amendments. Section 19(c) of the Act establishes certain procedures, including the requirement of an oral hearing, if the Commission on its own initiative seeks to amend the rules of a self-regulatory organization. The Commission, of course, has not followed the section 19(c) procedures in this proceeding because those procedures are inapposite. Section 19(c) applies only to rules of a self-regulatory organization ("SRO") and not to national market system plans, such as the ITS Plan, adopted under section 11A(a)(3)(B) of the Act and which are not SRO rules. In adopting the Plan Rule, the Commission and commentators addressed the interrelationship between sections 11A(a)(3)(B) and 19(c) of the Act. While no commentator questioned the ability of the Commission to amend effective national market system plans apart from section 19(c), a number of commentators argued that the Plan Rule procedures should be analogous to the procedures contained in section 19(c). The Commission responded that there was no legal requirement that the procedures under Section 11A(a)(3)(B) be the same as the section 19(c) procedures, and, moreover, as a policy matter, it did not believe oral hearings were desirable for Commission-initiated plan amendments in light of Congress' desire to give the Commission "maximum flexibility" in facilitating the development of a national market system. For a further discussion of these issues, see Securities Exchange Act Release No. 17580 (February 26, 1981), 46 FR 15866 at 15868-9.

amendments were set forth in Securities Exchange Act Release No. 18536 (March 4, 1982), [47 FR 10658, March 11, 1982] with the following changes:

1. Add new paragraph 1(3) to provide as follows:

(3) "Block trade" means a trade in a Participant Market that (a) involves not less than 10,000 shares of a System security or a quantity of any such security having a market value of \$200,000 or more and (b) is effected at a single "clean-up" price.

2. Renumber paragraphs 1(3) through 1(23) as paragraphs 1(4) through 1(24), respectively.

3. Add new paragraph 1(25) to provide as follows:

(25) "NASD Commencement Date" means the date upon which the Securities and Exchange Commission has ordered the initial implementation of the ITS/CAES Interface, on a pilot basis, as provided in Securities Exchange Act Release No. 17744 (April 21, 1981), as that order has been amended.

4. Renumber paragraphs 1(24) through 1(35) as paragraphs 1(26) through 1(37), respectively.

5. Amend newly-numbered paragraph 1(26) to provide as follows:

(26) "19c-3 security" means an Eligible Security that is not a "covered security" as that term is defined in SEC Rule 19c-3 as in effect on May 1, 1982.

6. Amend newly-numbered paragraph 1(29) to provide as follows:

(29) "NYSE UFDC" means the NYSE's "Universal Floor Device Control System," a computerized system that when fully implemented will, to some extent, replace the original ITS stations on the NYSE floor. The NYSE UFDC is not part of the System, but accommodates the routing of communications between the System and the NWSE floor and permits the entry and receipt of System communications by means of card readers and their associated printers ("NYSE UFDC stations").

7. Amend paragraph 4(a) to provide as follows:

4. *Administration of ITS Plan.* (a) *Operating Committee: Composition, Voting.* Each Participant shall select from its staff one individual to represent such Participant as a member of the Operating Committee under the ITS Plan, together with a substitute for such individual. * * *

8. Amend paragraph 5(a)(ii) to provide as follows:

(ii) *Control Center.* The System also includes a control center, which monitors and controls communications within the System, including the

Commission believes that CAES market makers are able efficiently to obtain consolidated and primary market last sale information from vendor display devices on their premises.

²⁰ Linkage Order, 46 FR at 23862.

processing of error conditions. The control center staff is able to display and, when authorized by any Participant, to modify the security and market records of that Participant's Market as such records relate to the System. * * *

9. Amend paragraph 6(a)(i)(A) to provide as follows:

(A) *Receipt of Quotations.* * * * Similarly, the NASD agrees that, for each ITS/CAES security in which an ITS/CAES Market Maker is registered as such with the NASD for the purposes of the Applications, there shall be available at each location on the premises of such ITS/CAES Market Maker at which ITS/CAES stations are located a quotation service that disseminates the bid price and the offer price then being furnished by or on behalf of each other Participant. * * *

10. Amend paragraph 6(a)(i)(B) to provide as follows:

(B) *Furnishing of Quotations.* As to each System security that is traded on its floor, each Exchange Participant other than the CSE shall furnish, or cause to be furnished, to each "receiving Participant Market" as defined below, or to a person acting therefor, the current bid-asked quotation emanating from its trading floor. As to each System security that is assigned to one or more Designated Dealers, the CSE shall furnish, or cause to be furnished, to each receiving Participant Market, or to a person acting therefor, the current bid-asked quotation that the CSE would be required to make available by SEC Rule 11Acl-1 if it were in effect in the form that it existed on March 1, 1982 as applied to the CSE in securities that are assigned to one or more Designated Dealers. * * *

Each Participant shall to the best of its ability assure that accurate and timely quotations are furnished to receiving Participant Markets or a person acting therefor as provided in this section 6(a)(i)(B), and that each such quotation is accompanied by size as required by Rule 11Acl-1 as in effect on March 1, 1982. * * *

11. Amend paragraph 6(b)(i) to provide as follows:

(b) *Technical Matters. (i) Commitment Information, Expiration.* * * *

(G) Designate the commitment "short" or "short exempt" whenever it is a commitment to sell short; this will permit the short sale rule as in effect in the destination Participation Market to apply, and * * *

Until the NASD causes CAES to be modified to permit compliance with SEC Rule 10a-1 in accordance with its undertaking in section 8(f)(vi), section

(6)(b)(i)(G) shall not apply to commitments to sell short sent to or from the ITS/CAES Third Market. Prior to such modification, a member shall send such a commitment to sell short if, at the time he sends the commitment and as measured by the last sale information then available in the originating Participant Market, an execution of the commitment within the destination Participant Market would not violate (A) said short sale rule or (B) in the case of a member on the floor of the AMEX or the NYSE, the short sale rule as in effect on the AMEX or the NYSE, respectively. * * *

12. Amend paragraph 6(b)(iii) to provide as follows:

(iii) *Commitment Pricing, Acceptance.* * * * Such rules shall require that the price specified in the commitment (or if, from the standpoint of the sender of the commitment, a better price is received, then such better price) shall be the price reported to the CTA Plan Processor and, when an agency transaction, shall also be the price of the transaction as confirmed to the customer. The rules of each Participant shall provide that a commitment to trade received in such Participant's Market shall be executed in whole or, if not possible, in part as soon as it reaches the member(s) having the acceptance obligation described above in this paragraph and any portion not so executed shall be cancelled; provided, however, that the commitment shall remain irrevocable for the time period chosen by the sender of the commitment as discussed in section 6(b)(i). * * *

13. Amend paragraph 7(a) to provide as follows:

7. *Pre-Opening Application. (a) Description of Pre-Opening Application.* * * *

The Pre-Opening Application operates as follows: whenever a market maker in any Participant Market, in arranging an opening transaction in his market in a System stock, determines that the opening transaction will be at a price which is more than $\frac{1}{4}$ of a point away from the last price at which a transaction in that stock was reported by the CTA Plan Processor on the last previous day on which transactions in such stock were reported by the CTA Plan Processor (the "previous day's closing price"), the rules of the Participant governing such market maker (the "inquiring market maker") will require the inquiring market maker to notify market makers in that stock in the other Participant Markets of such

situation by sending a security broadcast administrative message, called a "pre-opening notification," through the System. Thereafter, the inquiring market maker is prohibited from opening the stock in question in his market until not less than five minutes after his transmission of the preopening notification.

The pre-opening notification is designated as such, identifies the stock and states the side of the market in which the order imbalance exists, the amount of the imbalance (if any) and the amount paired off (if any). For example, assume the inquiring market maker in XYZ stock holds the following orders:

Buy	Sell
7,000 at market	1,000 at market
200 at 40	
300 at 40%	500 at 40%
1,500 at 40%	500 at 40%
	1,000 at 40%
	500 at 40%
2,000 at 41	

Assume also that the previous day's closing price in XYZ was 40 and that the inquiring market maker, on the basis of the orders he has, contemplates opening XYZ in his market at a price that is more than $\frac{1}{4}$ of a point away from the previous day's closing price. * * *

14. Amend the footnote to the fourth sentence of the fourth paragraph of section 7(a) to provide as follows:

A pre-opening response from the ITS/CAES Third Market will aggregate the ITS/CAES Third Market interests to buy, separately identifying the aggregate interests to buy as agent and the aggregate interests to buy as principal, and will also aggregate the ITS/CAES Third Market interests to sell, separately identifying the aggregate interests to sell as agent and the aggregate interests to sell as principal.

15. Amend paragraph 7(c) to provide as follows:

(c) *Subsequent Notifications.* If the order situation in the inquiring market maker's market changes significantly because of new orders received from broker-dealers in the Participant Market in which he is located or because of the pre-opening responses he has received, such Participant's rules will require such inquiring market maker to issue an additional pre-opening notification. These order situations are described below. Except in the case of a "second look" notification made as provided in section 7(c)(iv), the additional pre-opening notification will be a security broadcast administrative message.

(i) *Reversal of Imbalances.* Where a pre-opening notification identifies an

imbalance on one side of an inquiring market maker's market and, prior to his opening of the stock in question, the imbalance in his market has reversed so that an imbalance exists on the other side of the market, each Participant's rules will require such inquiring market maker to issue a replacement pre-opening notification (a "reversal" notification) before opening his market in the stock if he contemplates opening the stock at more than $\frac{1}{4}$ of a point away from the previous day's closing price. Thereafter, under such rules, the inquiring market maker will be prohibited from opening the stock in question in his market until not less than five minutes after his transmission of the reversal notification. A reversal notification contains the same kind of information as is required in the original pre-opening notification.

(ii) *Increase or Decrease in Imbalance.* Where (A) the total number of shares (the amount of the imbalance plus the stock paired off) indicated in a pre-opening notification increase or decrease by 50 percent or more prior to the opening of the stock and (B) the opening transaction is thereupon expected to be for 5000 shares or more, each Participant's rules will require the inquiring market maker to issue a replacement pre-opening notification (an "additional" notification) before opening his market in the stock. Thereafter, under such rules, the inquiring market maker will be required to wait either (A) one minute or (B) until the balance of the original five-minute waiting period expires, whichever is longer, before opening his market (i.e., if more than one minute of the five-minute waiting period has not yet expired at the time the additional notification is sent, the inquiring market maker must wait for the rest of the period to pass before opening his market). An additional notification contains the same kind of information as is required in an original pre-opening notification.

(iii) *Shift to within Price Parameter.* Each Participant's rules will also require the inquiring market maker to notify the receiving market maker(s) prior to opening the stock in question if the imbalance indicated in the pre-opening notification has been reduced, eliminated or reversed so as to indicate an opening price not more than $\frac{1}{4}$ of a point away from the previous day's closing price. Such a notice (an "altered" notification) will state: "XYZ PRE-OPENING NOTIFICATION ALTERED." Thereafter, under such rules, the inquiring market maker will be required to wait either (A) one minute or (B) until the balance of the original five-

minute waiting period expires, whichever is longer, before opening his market.

(iv) *Participation as Principal Precluded ("Second Look").* The Operating Committee may authorize a "second look" procedure whereby, if a responding market maker who has indicated in his pre-opening response interest as principal at a price better than the contemplated opening price would be precluded from participation as principal in the opening transaction, the rules of each Participant would require the inquiring market maker (A) to send a single destination administrative message notifying such responding market maker of the price and size at which he could participate as principal (a "second look" notification) and (B) thereafter wait either (1) one minute or (2) until the balance of the original five-minute waiting period expires, whichever is longer, before opening his market. The Operating Committee may generally except, or may permit each participant to except as to its market, specified securities or circumstances from the second look notification requirement. Action may be taken pursuant to this section 7(c)(iv) by the Operating Committee only pursuant to written agreement signed by all members of the Committee.

16. Amend paragraph 7(d) to provide as follows:

(d) *Sole means of Pre-Opening Routing.* * * * However, prior to the opening of trading in a security in any Participant Market (or prior to the resumption of trading in a security in any Participant Market following the initiation of a Regulatory Halt in such security as referred to in section X of the CTA Plan), no obligation to trade, commitment to trade or order in such security (as either principal or agent) shall be sent through the System to such Participant Market until a pre-opening notification in such security has been issued from such Participant market.

17. Amend paragraph 7(g) to provide as follows:

(g) *Reports of Participation.* Promptly following the opening in any stock as to which an inquiring market maker issued a pre-opening notification, the inquiring market maker shall report to each responding market maker (or if, as described in section 7(f), a pre-opening response contained the aggregate interests of more than one responding market maker, to the Participant responsible for the market in which the responding market makers are located) (i) the amount of stock purchased and/or sold, if any, by the responding market

maker(s) in the opening transaction and the price thereof or (ii) if the responding market maker(s)'s response included principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate. * * *

18. Amend paragraph 7(h) to provide as follows:

(h) *Applicability following Regulatory Halts.* The Pre-Opening Application shall apply prior to any resumption of trading, or of the dissemination of quotations in the third market, following the initiation of a Regulatory Halt by any Exchange Participant, as referred to in section X of the CTA Plan, if trading has been halted in all Exchange Markets and, when the affected security is an ITS/CAES security, if the NASD has suspended quotations in the affected security. * * * The Pre-Opening Application shall not apply when trading in any Participant Market is resumed following (i) the initiation of a Regulatory Halt if trading has not been halted in all exchange markets and, * * *

19. Amend paragraph 8(a) to provide as follows:

8. *Participants' Implementation Obligations.* (a) *System Access.* * * * During the NASD Pilot Phase, no commitment to trade any security shall originate in the ITS/CAES Third Market otherwise than as a consequence of an ITS/CAES Market Maker registered as such in the security with the NASD for the purposes of the Applications (or his employee) entering the commitment into the ITS/CAES station located on his premises. Any commitment so originating shall be routed directly to the system through the CAES Switch. The manner in which commitments to trade should originate in the ITS/CAES Third Market and be routed through the CAES Switch after the NASD Pilot Phase has not yet been determined and will be considered by the Exchange Participants and the NASD pursuant to the provisions of section 10(d). * * *

20. Amend paragraph 8(b) to provide as follows:

(b) *Participant Trading Rules.* Except as provided in section 6(b)(i) as to commitments to sell short sent through the CAES switch prior to its modifications as referred to in that section, the trading rules applicable in destination Participant Markets shall apply to commitments to trade received in such market and executions of commitments therein. * * *

21. Amend paragraph 8(d)(i) to provide as follows:

(d) *Order Protection.*—(i) *Trade-Throughs: Locked Markets.* Absent

reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not purchase any security that he is permitted to trade through the System at a price that is higher than the price at which that security, at the time of such purchase, is offered in one or more other Participant's Markets that trade the security through ITS as reflected by the offer from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by, such member or available in the quotation service used by an ITS/CAES Market Maker. Similarly, absent reasonable justification or excuse, a member located in an Exchange Market, or an ITS/CAES Market Maker, should not sell any such security at a price that is lower than the price at which that security, at the time of such sale, is bid for in one or more other Participant's Markets that trade the security through ITS as reflected by the bid from such other Participant's Market(s) then being displayed on the trading floor of, or available in the quotation service used by such member or available in the quotation service used by an ITS/CAES Market-Maker. The Participants also agree that "locked markets" in System securities should be avoided.

22. Amend paragraphs 8(d) (ii) and (iii) to provide as follows:

(ii) *Adoption of Trade-Through Rules.* In order to implement the intent of section 8(d)(i), each Exchange Participant has adopted, and obtained SEC approval, of a "trade-through rule" substantially the same as the rule attached as Exhibit A. In order to implement the trade-through rule as so adopted, each Exchange Participant that furnishes to other Participants bid-asked quotations that are generated by an automated quotation tracking system (such as the Autoquote system or the Centramart system currently employed by certain Participants) agrees that no such quotation shall be for more than 100 shares except that the PSE agrees that no such quotation from either of its two trading floors shall be for more than 100 shares.

(iii) *Block Trade Policy.* The trade-through rules adopted by the Participants shall not apply to transactions that are, or are part of, a block trade. Each Exchange Participant has adopted, and agrees to keep in effect, a "block trade policy" as to such trades substantially the same as the policy attached as Exhibit B. The Participants agree to continue their efforts to define and develop an additional application that will address

the trading of blocks of System securities so as to further enhance protection of public limit orders. Pending the implementation of such an additional Application, the block trade policy of each Exchange Participant shall require any member located in such Exchange Participant's Market who executes in such Exchange Participant's Market a block trade in any security that he is permitted to trade through the System at a clean-up price inferior to the quotation for such security then being furnished from any other Participant Market pursuant to section 8(a)(i)(B), upon executing the block trade, to send to each other Participant Market furnishing hereunder a bid or offer (as the case may be) superior to the clean-up price a commitment to trade at the clean-up to satisfy the number of shares included in such other Participant Market's bid or offer. A party in an Exchange Market, or an ITS/CAES Market Maker, whose bid or offer was not satisfied in violation of another Participant Market's block trade policy may report the violation through the System by sending a complaint with respect thereto promptly following the block trade and, in any event, within five minutes from the time the report of the block trade disseminated over the high speed line of the consolidated last sale reporting system.

23. Amend paragraph 8(f)(i) to provide as follows:

(f) *NASD Implementation Obligations.*—(i) *NASD Identification of Market Makers.* Prior to the NASD Commencement Date, the NASD shall identify to each Exchange Participant in writing (A) each ITS/CAES Market Maker and the one or more ITS/CAES securities in which it has registered as such for the purpose of the Applications and (B) the clearing corporation through which each ITS/CAES Market Maker shall settle System trades, or, if such ITS/CAES Market Maker elects to settle System trades through another clearing member, the identity of such clearing member and the clearing corporation through which such clearing member shall settle System trades on behalf of such ITS/CAES Market Maker. Thereafter, the NASD shall promptly so notify each Exchange Participant of each change therein or addition thereto.

24. Amend paragraph 8(f)(ii) to provide as follows:

(ii) *NASD ITS/CAES Market Maker Agreements.* The NASD shall require each ITS/CAES Market Maker to execute an agreement with the NASD (copies of the form of which have been furnished to the Exchange Participants) by which he (A) explicitly undertakes to

comply with the ITS Plan and the NASD requirements described in section 8(f)(iii), (B) explicitly agrees to accept and to settle on the regularly scheduled settlement date, or to cause the clearing member acting on his behalf to accept and to settle on the regularly scheduled settlement date, each side of a System trade that the System identifies as constituted by him or by such clearing member (as the case may be), and (C) explicitly recognizes that he may be subject to censure, fine, suspension or any other fitting penalty, and his registration as an ITS/CAES Market Maker may be subject to suspension or revocation, for any failure to comply with the provisions of the ITS Plan or of the agreement required by this section 8(f)(ii). If such ITS/CAES Market Maker elects to settle all his System trades through another clearing member, such other clearing member shall also execute an agreement by which such clearing member explicitly agrees to accept and to settle on the regularly scheduled settlement date each side of a System trade that the System identifies as constituted by such clearing member.

25. Amend paragraph 8(f)(iii) to provide as follows:

(iii) *NASD Implementation Requirements.* Prior to the NASD Commencement Date, the NASD shall specify requirements:

(B) Providing that as a condition of registration and reregistration and of continued registration of each ITS/CAES Market Maker that he:

(C) Applying to the trades of ITS/CAES Market Makers in an appropriate fashion the concepts of the trade-through rule and block trade policy attached as Exhibits A and B.

26. Amend paragraph 8(f)(v) to provide as follows:

(v) *MSI Clearing Corporation Arrangement.* In order to enable the NASD to perform its settlement obligations as provided in section 9 (d), MSI shall enter into an arrangement with a registered clearing corporation meeting the criteria of section 5(b)(i) that provides that such clearing corporation shall book to an account of MSI each side of System trade that (A) is identified as attributable to the ITS/CAES Third Market but (B) is not identified as constituted by one or more ITS/CAES Market Makers or clearing members acting on his or their behalf.

27. Add the following heading to 8(f)(vi):

(vi) *CAES Modifications for Short Commitments.*

28. Amend paragraph 8(f)(vii) to provide as follows:

(vii) *MSI Representation.* The NASD represents that MSI, the operator of CAES, is a wholly-owned subsidiary of the NASD. The NASD shall cause MSI to operate CAES in a manner consistent with the ITS Plan and to fulfill MSI's obligations under the ITS Plan.

29. Amend paragraph 9(b)(ii) to provide as follows:

(ii) Either (A) the originating Exchange Participant and clearing member(s) or (B) the NASD, the ITS/CAES Market Maker(s) or clearing member(s) acting on his (their) behalf identified by the System as originating the trade, and the clearing corporation(s) through which such market maker(s) or clearing member(s) shall settle the trade.

30. Amend paragraph 10(b) to provide as follows:

(b) *Closed Markets; Trading Halts and Suspension.* * * * Similarly, whenever the third market is closed as to a particular security due to a halt in or suspension of trading in that security or whenever the NASD has suspended third market quotations in that security, no commitment to trade through ITS with respect to that security may be transmitted through the CAES switch.

31. Amend paragraph 10(d) to provide as follows:

(d) *NASD Pilot Phase.* The Participants agree that the ITS/CAES Market Makers shall commence their use of the System through the CAES Switch with a pilot phase (the "NASD Pilot Phase"), during which commitments to trade, responses thereto and pre-opening notifications and responses may be sent through the CAES Switch from or to ITS/CAES Market Makers only with respect to those System securities that are among the 30 19c-3 securities meeting the definition of an "ITS/CAES security" for the purposes of the NASD Pilot Phase as provided in section 1(17). The NASD shall identify those 30 securities to the Exchange Participants prior to the NASD Commencement Date.

It is contemplated that the NASD Pilot Phase shall continue until the first day of a calendar month that is, or is the first such day after, the 180th day following the NASD Commencement Date. * * *

Among the issues to be addressed in completing the fair competition task are: (i) The price at which over-the-counter principal trades should be reported to the consolidated tapes so as to preserve the integrity of the ITS order protection rules and policies adopted pursuant to sections 8(d) and 8(f)(iii) and (ii) the appropriateness of additional registration requirements for ITS/CAES

Market Makers. In addition, the Exchange Participants and the NASD will also reconsider the question of how the ITS Plan should permit commitments to trade to originate in the ITS/CAES Third Market and be routed through the CAES Switch. * * *

32. Amend paragraph 11(a)(i) to provide as follows:

(i) *Cost Definitions.*

(A) "Average line cost" as used with reference to any Participant means (1) the total line costs identifiable to the formula lines and associated modems linking such participant (or, in the case of the NASD, the CAES Switch and the CAES Supervisory Center) with the System's control center and facilities manager divided by (2) the total standardized number of such lines.

(f) "Line costs" mean the total of monthly rentals paid to common carriers for lines and associated modems employed in the System's communication network (which links the Exchange Markets, the CAES Supervisory Center and the CAES Switch with the System's control center and facilities manager), other than (1) "back-up" lines and associated modems (the costs of which are borne by the Participant whose market is linked thereby) and (2) "hot lines" permitting conversations among broker-dealers and staff in different Participant Markets and with the System's control center (the costs of which are included in production costs), plus any federal, state or local taxes applicable to such rentals, and excludes all costs with respect of lines and associated modems (1) linking multiple floors to any Participant, (2) linking the CSE floor with CSE members or (3) linking CASES, the CAES Supervisory Center and ITS/CAES Market Makers with one another. Lines, the costs of which are included in "line costs," are referred to in this section 11 as "formula lines."

33. Amend paragraph 11(a)(i)(M) to provide as follows: * * * The AMEX's "share of the transaction base" as computed for any calendar quarter during some or all of which the AMEX was a participant means a fraction, the numerator of which is the transactions figure reported by the AMEX as required by clause (2) of section 11(a)(i)(O) and the denominator of which is the transactions base for the calendar quarter. * * *

34. Amend paragraph 11(a)(iii)(E) to provide as follows:

(E) *CAES Interface Costs.* Enabling the System to accommodate participation by ITS/CAES Market

Makers requires incurring development costs that benefit initially only the NASD and ITS/CAES Market Makers (the "ITS/CAES development costs"). These costs include the costs incurred by the System's facilities manager of (1) creating the automated interface (\$262,480), (2) adding function designators to administrative messages (\$48,762), (3) System programming to accommodate the NASD Supervisory Center (estimated at \$13,000), (4) testing performed before March 1, 1982 attributable to the delayed NASD development effort (\$40,603) and (5) testing performed after March 1, 1982, (estimated at \$45,000-\$50,000 per month). The NASD shall pay the difference between the total of the ITS/CAES development costs as finally calculated and \$28,091. The subtraction of \$28,091 (which is the amount of the development costs incurred in connection with the commencement of the participation of the CSE) reflects the fact that if the NASD's participation was otherwise than by an automated interface, development costs incurred in connection therewith would have been borne by all Participants pursuant to clause (2) of section 11(a)(iii)(B). The \$28,091 shall be shared by all Participants (including the NASD) in accordance with said clause (2).

If any Participant in addition to the NASD shall subsequently participate through the automated interface, such Participant shall pay to the NASD a portion of \$283,151, which is the difference between (1) the \$311,242 in sharable ITS/CAES development costs (identified in clauses (1) and (2) of the preceding paragraph) and (2) \$28,091. Such Participant's portion shall equal its share of the transactions base.

35. Amend paragraph 11(a)(v)(A) to provide as follows:

(A) *Shared Line Costs.* Such Participants shall share 100 percent of the product, as calculated for each Participant, of (1) the average line cost incurred during such month for such Participant and (2) the smaller of either 3 or the standardized number of formula lines linking such Participant (or, in the case of the NASD, the CAES Switch and the CAES Supervisory Center) with the System's control center and facilities manager. Such Participants shall also share 50 percent of the product, as calculated for each Participant, of (1) the average line cost incurred during such month for such Participant and (2) the smaller of either 4 or the standardized number of such formula lines in excess of 3. * * *

36. Amend the heading of Section 12 to provide as follows:

12. *Withdrawal from ITS Plan.*

37. Amend paragraph 13 to provide as follows:

13. *Effective date; Transition.* The ITS Plan shall be effective on the NASD Commencement Date. Prior to the effective date of the ITS Plan, * * *

Effective Date of the Amendments

Pursuant to the Administrative Procedure Act,²² the Commission finds good cause for making the amendments to the ITS Plan effective prior to 30 days following publication of the final rule. As discussed above, the Commission considers the immediate implementation of an automated interface to be a critical event in the development of the national market system. Although originally scheduled to be implemented on March 1, 1982, the Commission deferred the implementation date to May 1, 1982, due (i) to delays in technical preparations for the interface and (ii) to allow for public comment on the proposed ITS Plan amendments. Technical preparations for the interface now are complete and the parties have had ample time to prepare for the May 1, 1982 implementation date specified in the Commission's amended linkage order. The Commission now is taking the final action necessary to allow for implementation by approving the final ITS Plan amendments to allow for the NASD's inclusion in the ITS. These amendments are relatively noncontroversial, have been published for comment and are being adopted in substantially the form agreed upon by the parties. Therefore, to allow for the implementation of the automated interface at the earliest possible date and to allow the parties to receive notice of these final ITS Plan amendments,²³ the Commission has determined that the amendments should become effective on May 17, 1982.²⁴

By the Commission.

George A. Fitzsimmons,
Secretary.

May 6, 1982

[FR Doc. 82-12943 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

²² 5 U.S.C. 553(d)(3).

²³ As well as publishing this release, the Commission will give actual notice of the adoption of the final amendment to the ITS Plan to each of the ITS participants, the NASD and the other parties who commented on the proposed amendment.

²⁴ The Commission today also is amending its Linkage Order to defer the implementation of the automated interface for two weeks, to May 17, 1982. Securities Exchange Act Release No. 18712 (May 6, 1982).

[Release No. 12422; 812-5120]

Calvert Municipal Management Co. et al.; Filing of Application for Exemption

May 6, 1982.

In the matter of Calvert Municipal Management Company, Government Securities Management Company, Inc., Calvert Tax-Free Reserves, First Variable Rate Fund For Government Income, Inc., 1700 Pennsylvania Avenue, NW., Washington, D.C. 20006, Scott D. Paseltiner, 4314 Westover Place, NW., Washington, D.C. 20016.

Notice is hereby given that Calvert Tax-Free Reserves ("CTFR"), First Variable Rate Fund for Government Income, Inc. ("FVRF") (together referred to as "Funds"), both registered under the Investment Company Act of 1940 ("Act") as diversified, open-end, management investment companies; Calvert Municipal Management Company ("CMMC"), investment adviser to CTFR; Government Securities Management Company, Inc. ("GSMC"), investment GSMC; and Scott D. Paseltiner (collectively referred to as "Applicants"), filed an application on February 19, 1982, pursuant to Section 6(c) of the Act, for an order of the Commission declaring that Mr. Paseltiner shall not be deemed an "interested person" of the Funds, CMMC, GSMC, or of any investment company for which either CMMC or GSMC may in the future act as investment adviser by reason of his status as a general partner of Capital Investments, Ltd. ("CIL"), a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that CTFR, a Massachusetts business trust organized on October 20, 1980, consists of two separate and distinct portfolios, each of which invests primarily in a diversified portfolio of municipal obligations with the objective of obtaining the highest level of interest income exempt from federal income taxes as is consistent with prudent investment management. It is stated further that CMMC, the investment adviser to CTFR, has acted in such capacity since the inception of CTFR in 1980. Applicants represent that CMMC does not serve as investment manager, advisor, or as an underwriter for any other investment company.

Applicants state the FVRF, organized under the laws of the State of Maryland on February 24, 1976, is a money market fund which invests in U.S. Government-

backed obligations. It is stated that the investment objective of FVRF is to achieve the highest level of current income consistent with safety and stability of principal by investing only in U.S. Government-backed obligations, repurchase agreements secured by such obligations, and commitments to acquire such obligations. Applicants further state that GSMC, a Delaware corporation, has served as investment adviser for FVRF since its inception in 1976, and that GSMC does not manage, advise, or underwrite any other investment company. It is represented that GSMC and CMMC are under common control.

Applicants state that Mr. Paseltiner is a trustee of CTFR, and a director of FVRF. It is stated that he is also a general partner of CIL, a limited partnership formed in April, 1980, for the purpose of trading its own options account in order to produce profits in a proprietary fashion. Applicants represent that CIL became a registered broker-dealer pursuant to Section 15(b) of the Exchange Act on June 18, 1980, and a member of the Chicago Board Options Exchange ("CBOE") on June 19, 1980. It is stated that CIL remained inactive from June 1980 until February 1981. In February, 1981, it is stated, CIL appointed a nominee to trade its account on the CBOE. Applicants state that Mr. Paseltiner replaced the nominee in April, 1982, and actively trades the CIL account as an approved market-maker floor nominee for CIL. Applicants further state that CIL presently executes and clears transactions solely on behalf of its own account and engages in no public business as a broker or dealer.

Section 2(a)(19) of the Act, in pertinent part, defines an "interested person" of an investment company, and of any investment adviser of or principal underwriter for an investment company to include, *inter alia*, any partner of such other person. Applicants state that Mr. Paseltiner, as a result of his status as a general partner of CIL, would be considered an affiliated person of CIL and thus, an interested person of the Funds, CMMC and GSMC.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

Applicants represent that the fundamental investment policies of FVRF provide that FVRF may not write, or purchase, put or call options. It further represented that the fundamental investment policy of CTFR provides that it may not write put or call options, but that CTFR may purchase municipal securities and at the same time acquire the right to sell the securities back to the seller at an agreed-upon price at any time during a stated period or on a certain date. (Such a right, Applicants state, is generally known as a "put" or a "put option.") Applicants state that the foregoing fundamental investment policies may not be changed without shareholder approval. Applicants thereby indicate that the nature of the portfolio investment made by the Funds could not involve or relate to the activities of CIL, or to Mr. Paseltiner in his capacity as a principal of CIL.

Applicants further state because that investment activities of CIL are restricted to the trading of its own accounts, it is not organized to engage in any business or provide services that would be used by either CTFR or FVRF. Applicants represent that CIL has no direct or indirect business relationship with FVRF, CTFR, CMMC, or GSMC. Moreover, Applicants undertake, as a condition to the granting of the order for which they have applied, that neither CTFR, FVRF, nor any other investment company for which CMMC or GSMC may in the future act as investment adviser, will engage in any transaction with CIL as long as Mr. Paseltiner is an affiliated person of CIL, and a director, or a trustee, of any such investment company.

As additional support for the order requested, Applicants assert that Mr. Paseltiner is a man of recognized integrity, intelligence, judgment, independence and standing who has been a valuable member of the boards of both FVRF and CTFR. It is also stated that Mr. Paseltiner has served as chairman of the audit committee of the board of directors of FVRF, and is currently a member of the audit committee and the nomination committee of the board of directors of FVRF. Applicants state, as well, that security-holders of the Funds, or of any investment companies which either CMMC or GSMC may manage in the future, may be confused if Mr. Paseltiner were to be deemed an interested director of any such companies, since to do so would be indicative of the existence of an actual or potential conflict of interest which, Applicants

assert, does not, in fact, exist.

Applicants conclude that, on the basis of Mr. Paseltiner's personal stature and the absence of any possibility that either the Funds, CMMC, GSMC, or any investment companies for which CMMC or GSMC may in the future serve as investment adviser, Mr. Paseltiner is in a position to act independently on behalf of any of such investment companies and their shareholders. Applicants state, therefore, that it is in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to declare that Mr. Paseltiner is not an "interested person" of CTFR, FVRF, CMMC, or GSMC, or of any investment companies for which either CMMC or GSMC may in the future act as investment adviser, solely by reason of his status as an affiliated person of CIL.

Notice is further given that any person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by the Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12934 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12418; 812-5137]

Daily Cash Government Fund; Filing of an Application for an Order Exempting Applicant

May 5, 1982.

Notice is hereby given that Daily Cash Government Fund ("Applicant"), 3600 South Yosemite Street, Denver, Colorado 80237, an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application for an order of the Commission pursuant to Section 6(c) of the Act exempting it from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its price per share for the purposes of sales and redemptions of its shares to the nearest one cent on a share value of one dollar. In all other respects, portfolio securities held by Applicant will be valued in accordance with the views set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants states that it registered as an investment company on January 28, 1982 but that its Registration Statement has not yet been declared effective. It is a "money-market" fund organized as an unincorporated business trust under the laws of the State of Massachusetts. Applicant further states that its objective is to seek maximum current income that is consistent with low capital risk and the maintenance of liquidity. Applicants states that in addition to offering its shares to the general public, it is expected that it will be used as an investment vehicle for investors with temporary cash balances in securities accounts at certain brokerage firms.

Applicant states that its portfolio may, as a matter of fundamental investment policy, be invested in obligations issued by the United States Government or its agencies or instrumentalities maturing in twelve months or less from the date of purchase. Applicant may also purchase such obligations that mature in more than twelve months, if they are purchased subject to repurchase agreements calling for delivery in twelve months or less, or having been called for redemption, have a redemption date within twelve months or less.

Applicant states that the maintenance of a constant net asset value per share is expected to be a crucial factor in the purchase and holding of Applicant's

shares. Applicant asserts that by meeting the conditions set forth below and by valuing its shares to the nearest one cent on a share value of one dollar, it can maintain a constant value for its shareholders along with full liquidity and a satisfactory yield. In addition, Applicant states that its adherence to the conditions set forth below will substantially reduce the likelihood of significant variation from a constant share price and the likelihood of any dilution of the assets and returns of incoming or outgoing shareholders.

Rule 22c-1 under the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption and repurchase shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that it was inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of \$1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order, upon application, may conditionally or unconditionally exempt any person or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the issuance of the requested order is necessary and appropriate in the public interest and consistent with the protection of

investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that shareholders who purchase its shares with the expectation of receiving maximum current income consistent with stability of principal would be unfairly treated should there be a deviation below \$1.00 per share, because redeeming shareholders could lose not only all or part of the divided income which they have earned but even part of their principal, particularly if a redemption takes place relatively soon after a purchase.

Applicant represents that, to the extent necessary, the Applicant's Trustees will consider the advisability of temporarily suspending the payment of dividends, or making a capital gains distribution (if and to the extent that capital gains have not been reflected in prior dividends) to maintain a \$1.00 price per share, if the net asset value per share declines to a value below \$0.997 or rises to a value above \$1.003, respectively. Applicant also represents that in order to attempt to assure the stability of its net asset value per share it will adhere to the following conditions:

1. Applicant's Trustees, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertake—as a particular responsibility within their overall duty of care owed to Applicant's shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purposes of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from one dollar.

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share. Applicant will not purchase a portfolio security unless it matures in twelve months or less from the date of purchase, or is subject to a repurchase agreement so maturing or has been called for redemption within twelve months; not will it maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant will limit its portfolio investments, including repurchase agreements and securities called for redemption, to those instruments which are denominated in United States dollars and which the Trustees of Applicant determine present minimal credit risks, and which are of high

quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12935 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12421; 812-5138]

Franklin Money Fund, et al. Filing of an Application for an Order Amending a Prior Order Approving Certain Offers of Exchange and Granting an Exemption

May 6, 1982.

In the matter of Franklin Money Fund, Research Capital Fund, Inc., Research Equity Fund, Inc., Franklin Custodian Fund, Inc., Franklin Option Fund, Inc., Franklin Tax-Free Income Fund, Inc., Franklin Federal Money Fund, Franklin Tax-Exempt Money Fund, Franklin Cash Management Fund, Age High Income Fund, Inc., and Franklin Distributors, Inc., 155 Bovet Road, San Mateo, California 94402.

Notice is hereby given that Franklin Money Fund ("Franklin Money") (formerly named "Franklin Resources Liquid Assets Fund"), Research Capital Fund, Inc. ("Capital"), Research Equity Fund, Inc. ("Equity"), Franklin Custodian Funds, Inc. ("Custodian"), Franklin Option Fund, Inc. ("Option"), Franklin Tax-Free Income Fund, Inc. ("Tax-Free"), Franklin Federal Money Fund ("Federal"), Franklin Tax-Exempt Money Fund ("Tax-Exempt"), Franklin Cash Management Fund ("Cash"), and AGE High Income Fund, Inc. ("AGE"), all registered under the Investment Company Act of 1940 ("Act"), as open-end, diversified, management investment companies (collectively referred to herein as the "Funds"), and their principal underwriter and distributor, Franklin Distributors, Inc. ("Franklin") (collectively with the Funds referred to as the "Applicants"), filed an application on March 18, 1982, requesting an order of the Commission amending in the manner described below an earlier order of the Commission dated February 26, 1976 (Investment Company Act Release No. 9177). The previous order of the Commission (1) pursuant to Section 11(a) of the Act permitted the shareholders of Franklin Money to exchange their shares for those of Capital, Equity and Custodian on a basis other than their relative net asset values; and (2) pursuant to Section 6(c) of the Act exempted from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder the exchange offer. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Franklin is the principal underwriter for Capital, Equity, Custodian, and Option, which maintain a continuous public offering of their shares at their respective net asset values, with the addition of a sales charge based upon a percentage of the public offering price, as follows:

Franklin Money and Federal are money market funds whose shares are offered on a continuous basis without any sales charge. Applicants state that Tax-Exempt and Cash are also money market funds, the shares of which are intended to be offered to the public at net asset value with no sales charge, upon effectiveness of their pending registration statements under the Securities Act of 1933.

Applicants state that at the present time shareholders of Capital, Equity, Option, Tax-Free, AGE and any of the series of Custodian may exchange their

shares for shares of any of the other such funds on the basis of their relative net asset value per share without any sales load. Applicants further state that shareholders of Franklin Money may exchange their shares for shares of Capital, Equity or Custodian pursuant to the order of the Commission dated February 26, 1976, on the basis of their relative net asset values at the time of the exchange plus (in the case of shares of Franklin Money acquired other than pursuant to a previous exchange from shares of Capital, Equity or Custodian) the applicable sales charge described in the current prospectus of the exchanging fund. Option, Tax-Free and AGE propose to offer to shareholders of Franklin Money, Federal, Tax-Exempt or Cash the right to exchange their shares for shares of Option, Tax-Free and AGE on the basis of relative net asset value at the time of the exchange plus (in the case of shares of Franklin Money, Federal, Tax-Exempt or Cash acquired other than pursuant to a previous exchange from shares of Option, Tax-Free or AGE) the applicable sales charge described in the prospectus of the exchanging fund. In addition, Applicants propose that the offer of exchange approved by Commission order, dated February 28, 1976, between Capital, Equity and Custodian with Franklin Money be extended on the same basis to include Federal, Tax-Exempt and Cash.

Section 11(a) of the Act provides, in part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to an approved by the Commission.

Section 22(d) of the Act provides, in part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current public offering price described in the prospectus.

Applicants state that the Funds have differing investment objectives, and that the proposed exchange offers will permit a shareholder of any of the Funds who changes his investment objective to change his investment to different Fund. Applicants further state that shareholders would be informed of their

right to exchange shares of one Fund for shares of any of the other Funds.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12936 Filed 5-11-82; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 12417; 812-5121]

HIG Fund, Inc.; Filing of Application for an order Exempting Applicant From Provisions

May 4, 1982.

Notice is hereby given, that HIG Fund, Inc. ("Applicant"), Hartford Plaza,

Hartford, CN 06115, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 25, 1982, and an amendment thereto on March 22, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant was incorporated under the laws of the State of Maryland on February 3, 1982. It filed a registration statement under the Securities Act of 1933 and it will be engaged in the continuous public offering of its shares at a constant public offering price at the net asset value of \$1.00 per share. Applicant's investment objective is to achieve a high level of current income consistent with the preservation of capital and maintenance of liquidity by investing in a portfolio of money market instruments consisting of obligations of the United States Government, its agencies or instrumentalities, bank certificates of deposit, bankers' acceptances, corporate commercial paper, finance company commercial paper, repurchase agreements and bank fixed-term deposits, and corporate bonds, notes and other debt instruments.

Applicant seeks an order of the Commission pursuant to Section 6(c) of the Act exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant's assets to be valued according to the amortized cost valuation method.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors of the investment company. Rule 22c-1 under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an

order to purchase or to sell such security.

Rule 2a-4 under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the investment company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the act provides, in pertinent part, that the Commission by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant agrees to adhere to the following conditions to any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, the board of directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at \$1.00 per share.

2. Included within the procedures to be adopted by the board of directors shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using valuation procedures consistent with Section 2(a)(41) of the Act and Rule 2a-4 thereunder from the \$1.00 amortized cost price per share, and the maintenance of records of such review.¹

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1 percent, a requirement that the directors will promptly consider what action, if any, should be initiated.

(c) Where the directors believe the extent of any deviation from the \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: Redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.²

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will include in the

¹ To fulfill this condition, Applicant states that it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value, which may include, among others, (i) quotations or estimates of market value reflecting current market conditions, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

² In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less, as soon as reasonably practicable.

minutes of its board of directors' meeting and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the board of directors determines present minimal credit risks and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) was taken during the preceding fiscal quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

The application represents that Applicant's board of directors has determined that in light of the characteristics of the Applicant as described in the application and, subject to compliance with the above conditions, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicant.

Applicant asserts that the exemption requested is appropriate in the public interest to give shareholders the conveniences and advantages of the stable purchase and redemption price of \$1.00 per share and to bring the Applicant's valuation practices into alignment with the valuation practices of the major money market funds. Applicant further asserts that the requested exemption is consistent with investor protection and the purposes intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than May 31, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may

request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

(FR Doc. 82-12837 Filed 5-11-82; 8:45 am)
BILLING CODE 8010-01-M

[Release No. 12416; 812-5076]

IDS Government Securities Money Funds, Inc.; Filing of Application for Order Exempting Applicant From Provisions

May 4, 1982.

Notice is hereby given that IDS Government Securities Money Fund, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55402, a no-load, open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on January 8, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio securities on an amortized cost basis. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund whose investment policy is to provide maximum current income consistent with safety of capital and liquidity. Applicant states that its

portfolio will be invested in short-term debt obligations consisting of securities issued or guaranteed as to principal by the Government of the United States or by agencies or instrumentalities thereof, in repurchase agreements secured by such securities, and in commitments to acquire such securities. Applicant states that securities issued and guaranteed by the Government include a variety of U.S. Treasury bills, notes and bonds which are direct obligations of the U.S. Government and vary only in their maturities interest rates and times of issuance. Applicant asserts that securities issued or guaranteed by U.S. agencies or instrumentalities include, but are not limited to, debt obligations of Federal Home Loan Banks, Federal Farm Credit Banks, Federal National Mortgage Association, and banks and savings and loan associations where the principal amount of the obligation is fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Applicant submits that some of the securities that it will purchase are backed by the full faith and credit of the U.S. Government and that other securities are backed by the credit of the instrumentality or by the right of the issuer to borrow from the U.S. Treasury. Applicant states that while its assets will consist of securities with one year or less maturity and the dollar-weighted average maturity will be 120 days or less, the underlying security in a repurchase agreement may have a maturity of more than one year. Applicant maintains that these underlying securities will always be issued or guaranteed by the U.S. Government, its agencies or instrumentalities.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in

computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculation made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 states further that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. The Commission has expressed its view that, among other things, (1) Rule 2a-4 under the Act requires portfolio instruments of "money market" funds which have more than 60 days remaining to maturity be valued with reference to market factors, and (2) it would be inconsistent with the provisions of Rule 2a-4 for a "money-market" fund to value its portfolio instruments with over sixty-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because it will enable Applicant to maintain, under ordinary circumstances, the constant net asset value per share as well as the steady flow of investment income which investors want in a money market fund investment. The manager of Applicant believes, based on its experience in managing portfolios of money markets securities, that with respect to money market securities maturing in 120 or less there is normally a negligible discrepancy between market value and the amortized cost of such securities and thus Applicant believes that the valuation of its portfolio securities on the amortized cost basis will enable it to more effectively maintain its \$1.00 price per share while providing shareholders with the opportunity to receive a flow of investment income less subject to

fluctuation than under procedures where its daily dividend would be adjusted by all realized and unrealized gains and losses. In addition, investors would have the advantage of being able to determine the value of their investment simply by knowing the number of shares they own. Applicant agrees, in order to attempt to assure the stability of its price per share, that the following conditions may be imposed in the order it seeks:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's Board of Directors undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purposes of distribution, redemption and repurchase at \$1.00 per share.

(2) Included with the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's \$1.00 amortized cost price per share, and maintenance of records of such review. Applicant states that to fulfill this condition, it intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Directors in the exercise of its discretion to be appropriate indicators of value. In addition, Applicant states that the quotations or estimates utilized may include, *inter alia* (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1%, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems

appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: Redemption of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses or to shorten Applicant's average portfolio maturity; suspending dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share: *Provided, however*, That Applicant will not (a) purchase any instrument with a remaining maturity of greater than twelve months, or (b) maintain a dollar-weighted average portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days. In fulfilling this condition, if the disposition of a portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board of Directors determines present minimal credit risks and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2 (c) was taken during the preceding fiscal

quarter, and, if any such action was taken, will describe the nature and circumstances of such action.

The application states that Applicant's Directors have determined in good faith that in light of the characteristics of Applicant as described in the application and, subject to compliance with the above conditions, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities is appropriate and preferable for the Applicant and reflects fair value of such securities. It is the Directors' understanding that permission to calculate per share net asset value to the nearest one cent on a share value of \$1.00 in the event of realized gains or losses is implied in the foregoing conditions.

Notice is further given that any interested person may, not later than May 29, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 12396 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18690A; File No. SR-MSE-82-2]

Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Stock Exchange, Inc.

May 5, 1982.

On April 28, 1982, Securities Exchange Act Release No. 18690 was issued providing notice and announcing immediate effectiveness of a proposed rule change submitted by the Midwest Stock Exchange, Inc. The Release misidentified the rule change as File No. SR-MSE-82-4; the correct file number is SR-MSE-82-2.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12941 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18714; SR-NASD-82-5]

National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

May 6, 1982.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on May 4, 1982, copies of a proposed temporary rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder.¹

The proposed rule change seeks Commission approval of certain rules of practice and procedure governing trading through the Intermarket Trading System ("ITS") and Computer Assisted Execution System ("CAES") interface. These rules are necessary to provide for the NASD's participation in the ITS pursuant to the Commission's order requiring an automated interface between the ITS and CAES.² The rules also will allow the NASD to meet certain requirements imposed by the plan governing the operation of the ITS,

¹ Pursuant to Article VII, Section 1 of the NASD's by-laws, the NASD's Board of Governors, without the vote of its membership, has adopted these rules which become effective, upon Commission approval, for a period of up to six months. The NASD indicates that during the pendency of these rules, proposals for permanent rules will be submitted to its membership for comment and vote, and if approved, these rules will be filed with the Commission for approval.

² Securities Exchange Act Release No. 17444 (April 21, 1981), 46 FR 23856; Securities Exchange Act Release No. 18537 (March 4, 1982), 47 FR 10662; Securities Exchange Act Release No. 18712 (May 6, 1982).

as that plan recently has been amended by the Commission ("ITS Plan").³

The proposed rules include requirements for registration of ITS/CAES market makers, procedures for handling the withdrawal, suspension or revocation of an ITS/CAES market maker's registration, operating procedures for execution of transactions within the ITS/CAES System, procedures to obtain interest from other market centers in ITS/CAES securities prior to the opening of the System, procedures for responding to inquiries received from other market centers, procedures for the handling of "trade-throughs" (executing an order at a time when another ITS market center or CAES market maker is displaying a superior quotation), requirements regarding the execution of block transactions in ITS/CAES securities, requirements which prohibit the entering of a quotation for an ITS/CAES security which locks or crosses the market of another ITS/CAES market maker of ITS participant exchange and requirements for the clearance and settlement of transactions identified by the ITS/CAES System as having been executed by a particular ITS/CAES market maker.

The NASD notes that these rules, in almost all respects, are substantively identical to current rules adopted by the ITS exchange participants. The NASD also notes, however, that its procedures concerning trade-throughs incorporate a number of differences from that of the exchange rules on this matter.⁴ Specifically, the exchange trade-through rules require that where a timely complaint is received regarding a trade-through effected by two members dealing as principal, that transaction must be cancelled, while the NASD's

³ Securities Exchange Act Release No. 18713 (May 6, 1982).

⁴ The NASD also notes its "deep concern" over the issue of whether the quotations of all ITS/CAES market makers should be protected when a block transaction is executed in an ITS exchange market at a price inferior to such quotation. (The current ITS participant's trade-through rules, and block applications of those rules, only would protect the inside market in CAES.) The NASD states that it is filing this proposal at the current time only because of the urgency posed by the impending implementation of the ITS/CAES interface, and requests that the Commission and the ITS participants address this issue during the pilot phase of the interface. The NASD also expressly reserves its right to argue in the future that this limitation imposes burdens on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission is sympathetic to the NASD's concerns and emphasizes its longstanding position that the ITS participants, now including the NASD, resolve the larger issue of protection of away-from-the-market orders during the pilot as soon as possible, thus addressing not only the NASD's concerns, but the wider concerns in this area.

rule would permit two ITS/CAES market makers dealing as principal the additional options of adjusting the trade to a price which would not constitute a trade-through or sending a commitment for the full size of the bid or offer (as the case may be) traded through. The NASD states that these differences are necessitated by the fact that the proposed rule imposes corrective obligations on the ITS/CAES market maker irrespective of whether he initiated the transaction. Moreover, the automatic execution feature of CAES can cause trade-throughs in situations where an ITS/CAES market maker's quotation is hit without that market maker having any opportunity to refuse the trade because another ITS market center is displaying a superior quotation. The NASD believes that because the CAES market maker is responsible for correcting the trade-through and since the trade-through was not proximately caused by him, the various options provide a fair mechanism in which the CAES market maker may correct the trade.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change on or before June 2, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-82-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered national securities association and in particular, the requirements of Sections 11A and 15A and the rules and regulations thereunder. Specifically, the Commission finds that the additional

trade-through remedies proposed by the NASD for principal transactions are appropriate for CAES market makers because the automatic execution feature of CAES is capable of creating trade-throughs which are not the fault of the CAES market maker but still are attributable to his CAES quotations. The Commission also believes that the NASD's rules meet the requirements imposed by the ITS Plan.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that these rules govern the operation of trading through the ITS/CAES interface which becomes operational on May 17, 1982.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12942 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12420; 812-5132]

R. C. Brown Money Market Fund; Filing of Application for an Order of Commission Exempting Applicant From Provisions

May 5, 1982.

Notice is hereby given that R. C. Brown Money Market Fund ("Applicant"), 601 Montgomery Street, San Francisco, California 94111, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on March 10, 1982, and an amendment thereto on April 5, 1982 requesting an order of the Commission pursuant to Section 6(c) of the Act to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a corporation organized under the laws of the State of California, and that on March 3, 1982, it filed with the Commission a Notification of Registration under the Act on Form N-

8A and a Form N-1 Registration Statement under the Act and the Securities Act of 1933. Applicant states that its Registration Statement under the Securities Act has not yet been declared effective.

Applicant further states that as a "money market" fund, its investment objectives are to seek current income while preserving capital and liquidity by investing in a diversified portfolio of short-term money market instruments. It is stated that the money market instruments in which Applicant invests will consist of United States Government securities, government agency securities, bank money instruments (principally certificates of deposit, time deposits and bankers' acceptances), corporate debt securities, including commercial paper and variable amount master demand notes, and repurchase and reverse repurchase agreements. Applicant states that it will invest only in instruments having remaining maturities of one year or less, and that the dollar-weighted average maturity of its portfolio will be 120 days or less.

Applicant further represents that its investment policies authorize it to invest in variable rate certificates of deposit. With respect to variable rate certificates of deposit maturing in 180 days or less from the time of purchase with interest rates adjusted on a monthly cycle, Applicant states that it may use the period remaining until the next rate adjustment date for purposes of determining the average weighted maturity of its portfolio. Applicant agrees that until such time as the Commission has determined otherwise, Applicant will use the remaining period to maturity of all other variable rate instruments for purposes of determining the average weighted maturity of its portfolio.

Applicant states that its investment policies also provide authority to invest in time deposits and repurchase agreements maturing in more than seven days. Applicant represents that, as a condition to the issuance of the order requested herein, Applicant will not invest more than 10 percent of its total assets (taken at market value) in illiquid securities, including securities for which no readily available market exists, such as repurchase agreements maturing in more than seven days and time deposits. In addition, Applicant represents that to the extent that Applicant enters into reverse repurchase agreements and other arrangements described in Investment Company Act Release No. 10666 (April 18, 1979), it will do so in compliance with the conditions

specified therein and with any subsequent interpretations of the Commission.

Applicant further states that it will invest only in United States dollar-denominated debt obligations issued or guaranteed by the federal government, federal government agencies, or certain banks, savings and loan associations, and corporations. Bank money instruments must be issued by commercial and savings banks and savings and loan associations with total assets of at least \$1 billion, based upon latest published reports, except that Applicant may invest up to 10 percent of the value of its total assets (taken at market value at the time of such investment) in obligations of banks and savings and loan associations with assets of less than one billion dollars if the principal amount of such security is fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. It is stated that the savings banks and savings and loan associations must be organized and operating in the United States. Applicant states that the obligations of commercial banks may be issued by United States banks, foreign branches of United States banks ("Eurodollar" obligations) or United States branches of foreign banks ("Yankelidollar" obligations). Applicant's commercial paper investments at the time of purchase, it is stated, will be rated "A-1" by Standard and Poor's Corporation or "Prime-1" by Moody's Investors Service, Inc., or, if not rated, will be of comparable quality as determined by Applicant's board of directors ("Board of Directors").

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter thereof issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in

computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the investment company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that it seeks the exemptive order requested herein to use the amortized cost valuation method because it believes that many of its potential investors will require an investment vehicle that offers a constant net asset value per share and a relatively smooth stream of investment income, while providing a yield which is otherwise not available with a portfolio having an average maturity of a shorter duration. Applicant asserts that many such investors will seek other investment alternatives, including other money market funds using the amortized cost method, if such investors cannot be reasonably assured that shares of Applicant will be priced at a constant net asset value per share. Applicant further asserts that the use of the amortized cost valuation method, in conjunction with its policies of investing only in money market securities maturing in one year or less from the date of purchase and maintaining a dollar-weighted average portfolio maturity of 120 days or less, will greatly facilitate the maintenance by Applicant of a constant net asset value per share.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the

protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving management of Applicant's portfolio to Applicant's investment adviser, the Board of Directors undertakes—as a particular responsibility within its overall duty of care owed to Applicant's shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at \$1.00 per share.

2. Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the \$1.00 amortized cost price per share, and maintenance of records of such review.¹

(b) In the event such deviation from Applicant's \$1.00 amortized cost price per share exceeds $\frac{1}{2}$ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes that the extent of any deviation from Applicant's \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redemptions of shares in kind; the sale of portfolio securities prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; selling portfolio instruments prior to maturity; withholding dividends; or utilizing a net

¹ To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources.

asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any security with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.²

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the act.

5. Applicant will limit its portfolio investments, including repurchase and reverse repurchase agreements, to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality as determined by any major rating service, or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of fact or

law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12939 Filed 5-11-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12419; 812-5115]

Sunmont West Fund, Inc.; Filing of Application for an Order Exempting Applicant From Provisions

May 5, 1982.

Notice is hereby given, that Sunmont West Fund, Inc. ("Applicant"), Suite 102, 650 S. Cherry Street, Denver, Colorado 80222, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 16, 1982, and an amendment thereto on April 2, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the Applicant to value its assets using the amortized cost-method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized under the laws of the State of Maryland in 1982. It is a series investment company which intends to offer two

classes of shares, each class representing interests in one of two separate investment portfolios—the Discretionary Portfolio and the Non-discretionary Portfolio. The investment objective of each Portfolio is to seek current income and stability of principal by investing in high quality "money-market" instruments, including obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; certificates of deposit; bankers' acceptances; and commercial paper. Securities held in each Portfolio may be subject to repurchase agreements. Any such agreements entered into with a broker/dealer will be fully collateralized. Applicant states that it will not seek profits through short-term trading and will usually hold its portfolio securities to maturity.

Applicant states that shares of each Portfolio will be sold exclusively to customer accounts of The First National Bank of Denver, Denver, Colorado ("First of Denver"), and its affiliated and correspondent banks. These sales will take place pursuant to a "sweeping" arrangement authorized by participating bank customers, under which each such customer's bank account is "swept" automatically, not less frequently than weekly, and amounts in excess of a minimum balance agreed to by the bank and the customer are invested by Shearson/American Express, which is responsible for sales of the Applicant's shares, in shares of one or both of the Applicant's Portfolios. Such customer accounts may include the accounts of trust department clients and other kinds of accounts maintained by individuals, corporations, partnerships and businesses at First of Denver or one of its affiliated or correspondent banks. Further, shares in the Discretionary Portfolio will be sold only to customer accounts for which First of Denver or one of its affiliated or correspondent banks exercises substantial investment discretion; sales of shares in the Non-Discretionary Portfolio will be limited to other types of customer accounts. Applicant represents that it does not intend to purchase or otherwise acquire certificates of deposit or other securities of First of Denver or any of its affiliates. Applicant has obtained an opinion of counsel to First of Denver stating that the proposed activities of First of Denver will not violate any federal banking laws or regulations, and of counsel to Provident Institutional Management Corporation and Provident National Bank stating that the respective advisory and custodial services to be performed by these

² In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

companies will not violate any federal banking laws or regulations.

Applicant is requesting an order of the Commission pursuant to Section 6(c) of the Act exempting it from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit the assets in each of Applicant's Portfolios to be valued according to the amortized cost method. Under the amortized cost method of valuation, portfolio securities are valued at cost on the date of purchase and the difference between cost and the face amount of each instrument is amortized at a constant rate over the maturity of the instrument. For example, if an instrument is acquired at a discount from its face value, the discount would be amortized to maturity, resulting in the realization of income in a steady flow of equal increments. By valuing the securities in each of Applicant's Portfolios at amortized cost and declaring dividends daily, the net asset value per share of each Portfolio is expected to remain constant in the absence of unusual market conditions.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) With respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c-1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a-4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule

2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant states that it believes that its shareholders would be unfairly treated if Applicant were forced to price its portfolio instruments in a manner which would produce artificial price or yield volatility for instruments which Applicant expects to hold until maturity. Applicant believes potential shareholders are not concerned with the theoretical differences which might occur between the yield achieved through market pricing and the yield computed on the basis of amortized cost as described above. On the other hand, Applicant states that it believes that such potential shareholders are vitally concerned that (1) the net asset value of their shares remains stable; and (2) the daily net income declared on their investments be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis.

By maintaining Portfolios of high quality money-market instruments of short maturities, Applicant believes that it will be possible to provide the required stability to individuals and institutional investors. Applicant has determined that maintaining an average portfolio maturity of 120 days or less will accomplish the aims of Applicant's investors by reducing the risk of significant volatility in the value of portfolio instruments and at the same time producing a yield commensurate with those available in the market in which each of Applicant's Portfolios is investing. In addition, Applicant represents that prior to adopting the amortized cost method of valuation, Applicant's board of directors will

determine in good faith that in light of characteristics described in the application, including the conditions described below, absent unusual or extraordinary circumstances, the amortized cost method of valuing portfolio securities will reflect the fair value of such securities.

Applicant asserts that its application meets the standards of Section 6(c) of the Act in light of its management policies, and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at \$1.00 per share.

2. Included within the procedures to be adopted by the board of directors of the Applicant shall be the following:

(a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the \$1.00 amortized cost price per share, and the maintenance of records of such review.¹

(b) In the event such deviation from the \$1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated.

(c) Where the board of directors believes the extent of any deviation from the \$1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include:

¹ To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators or value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

Redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days.²

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks; and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each of its quarterly reports, as an attachment to form N-1Q, a statement as to whether

any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than June 1, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-12940 Filed 5-11-82; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY Fiscal Service

[Dept. Circ. 570, 1981 Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds; Merchants Bonding Company (Mutual); Change of Name

Merchants Mutual Bonding Company, an Iowa corporation, has formally changed its name to Merchants Bonding Company (Mutual), effective June 1,

1981. The company was last listed as an acceptable surety on Federal bonds at 46 FR 33970, June 30, 1981.

A certificate of authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Merchants Bonding Company (Mutual), Des Moines, Iowa. This new certificate replaces the certificate of authority issued to the company under its former name, Merchants Mutual Bonding Company. The underwriting limitation of \$244,000 established for the company as of June 30, 1981 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, 1981 Revision, at page 33970 to reflect this change. Copies of the circular, when issued, may be obtained from Audit Staff, Bureau of government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: May 6, 1982.

W. E. Douglas,
Commissioner, Bureau of Government
Financial Operations.

[FR Doc. 82-12926 Filed 5-11-82; 8:45 am]
BILLING CODE 4810-35-M

Office of the Secretary

[Suppl. to Dept. Circ.—Public Debt Series—
No. 11-82]

Series M-1985; Interest Rate

May 5, 1982.

The Secretary announced on May 4, 1982, that the interest rate on the notes designated Series M-1985, described in Department Circular—Public Debt Series—No. 11-82 dated April 29, 1982, will be 14½ percent. Interest on the

²In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

notes will be payable at the rate of 14 1/4 percent per annum.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-12837 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-40-M

[Supp. to Dept. Circ.—Public Debt Series—
No. 12-82]

Series B-1992; Interest Rate

May 6, 1982.

The Secretary announced on May 5, 1982, that the interest rate on the notes designated Series B-1992, described in Department Circular—Public Debt Series—No. 12-82 dated April 29, 1982, will be 13 3/4 percent. Interest on the notes will be payable at the rate of 13 3/4 percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 82-12836 Filed 5-11-82; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 92

Wednesday, May 12, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19266, Tuesday, May 4, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 11, 1982.

CHANGES IN THE MEETING: Delete Portfolio Stock Indexes application by the Chicago Board of Trade

[S-699-82 Filed 5-10-82; 9:58 am]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 3 p.m., Thursday, May 13, 1982.

PLACE: 2033 K Street, NW., Washington, D.C. fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for designation as a contract market in Stock Market Index Portfolio Futures.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-699-82 Filed 5-10-82; 9:58 am]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., May 18, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed Contact Market Designation of Gulf Coast Heating Oil/Chicago Board of Trade Minimum Financial Rules/Final Rules

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-706-82 Filed 5-10-82; 2:40 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., May 18, 1982.

PLACE: 2033 K Street, NW., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Two Rule Enforcement Reviews.

CONTACT PERSON FOR MORE

INFORMATION: Jane Stuckey, 254-6314.

[S-707-82 Filed 5-10-82; 2:40 pm]

BILLING CODE 6351-01-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-675-82.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: (9:30 a.m. (eastern time), Tuesday, May 11, 1982.

CHANGE IN THE MEETING: The meeting originally scheduled for May 11, 1982 has been cancelled. The next Commission Meeting will be held Tuesday, May 18, 1982 at 9:30 a.m.

CONTACT PERSON FOR MORE

INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued May 7, 1982.

[S-704-82 Filed 5-10-82; 2:27 pm]

BILLING CODE 6570-06-M

6

FEDERAL COMMUNICATIONS COMMISSION

Deletion and Change in Time for Oral Argument Scheduled for May 12, 1982.

Oral Argument in the case of City of New York Municipal Broadcasting System (WNYC), Docket Nos. 11227, 17588 and 19403 has been postponed at the request of the Office of General Counsel and the previously scheduled time for Oral Argument in the case of Radio Station WABZ, Inc. and Victor Broadcasting, Inc., Docket Nos. 78-63 and 78-64 has been changed to 9:30 a.m., Wednesday, May 12, 1982, in Room 856, at 1919 M Street, N.W., Washington, D.C.

Issued: May 6, 1982.

William J. Tricarico,
Secretary, Federal Communications
Commission.

[S-702-82 Filed 5-10-82; 12:07 pm]

BILLING CODE 6712-01-M

7

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, May 17, 1982, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

Liberty Bank, a proposed new bank, to be located at 4482 West Peoria Avenue, Glendale, Arizona.

Application for consent to merge and establish a branch:

Sun Bank of Volusia County, Daytona Beach, Florida, for consent to merge, under its charter and title, with Coronado Beach Bank, New Smyrna Beach, Florida, and to establish the sole office of Coronado Beach Bank as a branch of the resultant bank.

Application for consent to merge, establish twelve branches, and interchange main office designation:

Marine Bank, Meadville, Pennsylvania, for consent to merge, under its charter and title, with The Warren National Bank, Warren, Pennsylvania, to establish the twelve offices of The Warren National Bank as branches of the resultant bank, and to designate the main office of The Warren National Bank as the main office of the resultant bank.

Application for consent to consolidate and establish three branches:

Gorton Savings Bank, Mystic, Connecticut, for consent to consolidate, under its charter and with the title "The Chelsea Gorton Savings Bank," with The Chelsea Savings Bank, Norwich, Connecticut, and to establish the three offices of The Chelsea Savings Bank as branches of the resultant bank.

Request for modification of a condition imposed in granting Federal deposit insurance:

Bank of Stamford (In Organization), Stamford, Connecticut.

Requests for exemptions pursuant to section 348.4(b)(3) of the Corporation's rules and regulations entitled "Management Official Interlocks":

Peterson Bank, Chicago, Illinois.
First American Bank of Virginia, McLean, Virginia.

Request for exemption pursuant to section 348.6(a)(2) of the Corporation's rules and regulations entitled "Management Official Interlocks":

Clearwater Beach Bank, Clearwater, Florida.

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. 45,196-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee

Case No. 45,198-L—American National Bank, Houston, Texas

Case No. 45,202-L—Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico

Recommendation with respect to payment for level services rendered and expenses incurred in connection with receivership and liquidation activities:

Sidley & Austin, Chicago, Illinois, in connection with the liquidation of South Side Bank, Chicago, Illinois.

Memorandum and Resolution re: Proposed amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would (1) delegate to the Corporation's General Counsel the authority to act on appeals from initial denials or partial denials of requests for

records pursuant to the Freedom of Information Act; (2) delegate to the Corporation's Executive Secretary the authority to act on requests for a reduction or waiver of fees chargeable for making records available under the Freedom of Information Act; and (3) revise the schedule of fees for making records available.

Memorandum and Resolution re: Final amendments to Part 309 of the Corporation's rules and regulations, entitled "Disclosure of Information," which would permit banks to disclosed copies of FDIC examination reports directly to their parent holding companies and majority shareholders without prior FDIC approval if certain conditions are met.

Memorandum and Resolution re: Final amendments to Part 348 of the Corporation's rules and regulations, entitled "Management Official Interlocks," which would clarify the applicability of one of the exceptions to the regulation's general prohibitions when one of the interlocked depository institutions involved is not supervised by a Federal regulator.

Reports of committees and officers:

Minutes of the actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services: Investment Management Report, as of March 31, 1982.

Reports of the Director, Office of Corporate Audits:

Audit Report re: 960 Acre Almond Grove, United States National Bank Liquidation, dated January 12, 1982.

Audit Report re: Franklin National Bank, New York, New York—AP-231, dated January 22, 1982.

Discussion Agenda: Memorandum and Resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, and Notices of Acquisition of Control," and other provisions of the Corporation's rules and regulations, which would (1) amend the procedures relating to applications by insured nonmember banks for the Corporation's consent to establish branches (including remote service facilities), to relocate existing branches or facilities, and to establish and operate foreign branches; (2) expand the authority already delegated to the Corporation's various Regional Directors to approve requests for deviations from conditions

previously imposed by the Corporation in connection with various bank applications; (3) amend the recent delegations of authority to the Division of Bank Supervision to approve applications for Federal deposit insurance; and (4) eliminate certain procedural requirements relating to bank applications.

Memorandum and Resolution re: Proposed new Part 350 of the Corporation's rules and regulations, to be entitled "Special Reporting Basis for Insured Savings Banks," which would improve the quality of financial data reported to the FDIC by insured savings banks by (1) requiring all insured savings banks to report all financial assets and liabilities acquired or funded on or after January 1, 1983 on a fair value basis for purposes of preparing their Reports of Condition and Income that are filed with the FDIC, and (2) permitting insured savings banks to restate all financial assets and liabilities and bank premises existing on January 1, 1983, to their fair value.

Memorandum re: Proposed delegation of authority to the Director of the Division of Bank Supervision to approve applications for the Corporation's consent to merge, consolidate, purchase assets and assume deposit liabilities, or similar type applications if certain criteria are met.

Memorandum re: Proposal to co-sponsor a series of meetings on banking regulatory reform.

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.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: May 10, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-710-02 Filed 5-10-82; 3:46 p.m.]

BILLING CODE 6714-01-M

8

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, May 17, 1982, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (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:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (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. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for consent to merge and establish two branches:

Coastal Savings Bank, Portland, Maine, for consent to merge, under its charter and title, with Deering Savings and Loan Association, Portland, Maine, and to establish the two offices of Deering Savings and Loan Association as branches of the resultant bank.

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. 45,197—Central Savings Bank, New York, New York

Case No. 45,205—The Greenwich Savings Bank, New York, New York

Petition of the Investment Company Institute seeking certain relief in connection with the creation and operation by The Boston Five Cents Savings Bank, Boston, Massachusetts, of The Boston Five Mutual Fund, The Boston Five Money Market Fund, The Boston Five Fund Distributor, Inc., and The Boston Five Fund Adviser, Inc.

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, NW., 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: May 10, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[S-711-82 Filed 5-10-82; 3:47 pm]

BILLING CODE 6714-01-M

9

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19507, May 5, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. May 7, 1982.

CHANGE IN THE MEETING: The closed meeting has been cancelled.

Kenneth F. Plumb,
Secretary.

[S-700-82 Filed 5-10-82; 9:58 am]

BILLING CODE 6717-01-M

10

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 19844, Friday, May 7, 1982.

PLACE: Board room, Sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The Bank Board meeting previously scheduled for Wednesday, May 12, 1982 has been cancelled.

[No. 32, May 10, 1982]

[S-705-82 Filed 5-10-82; 2:27 pm]

BILLING CODE 6720-01-M

11

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 4, 1982.

TIME AND DATE: 10 a.m., Tuesday, May 11, 1982.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Medicine Bow Coal Company, Docket Nos. WEST 81-163 and WEST 81-164. (Issues include whether the judge properly refused to dismiss two cases where the Secretary filed his proposals for penalty more than 45 days after receipt of the notice of contest.)

2. Puerto Rican Cement Company, Docket No. SE 81-25-M. (Issues include whether the judge properly determined that the operator violated 30 CFR 56.4-27, which deals with the provision of fire extinguishers for self-propelled mobile equipment.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-708-82 Filed 5-10-82; 3:10 pm]

BILLING CODE 6735-01-M

12

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10 a.m., Monday, May 17, 1982.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed changes to the Board's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 7, 1982.

James McAfee,
Associate Secretary of the Board.

[S-697-82 Filed 5-7-82; 4:14 pm]

BILLING CODE 6210-01-M

13

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

TIME: 9 a.m. to 5 p.m.

DATE: Thursday, June 3, and Friday, June 4, 1982.

PLACE: Capitol Hill Hotel, Washington, D.C.

STATUS: Open.

MATTERS TO BE DISCUSSED:

(Thursday)

- Opening Comments, Chairman
- Introduction of Commissioners-Designate
- Approval of Minutes
- Update on Funding for 1983 and
- Constitutional Hearing, April 27, 1982
- Public/Private Sector Task Force Report

LSCA Oversight hearings—Report and Next Steps
Legislative/Public Awareness Committee Report

Progress Reports on:

—Task Force on Community Information and Referral Services

—Task Force on Library and Information Services to Cultural Minorities

(Friday)

Task Force on the Role of the Special Library in Nationwide Networks and Cooperative Programs

Budget/Finance Committee Report on Fiscal Year 1982 to Date

Discussion of Issue Papers

Planning/Futures Committee Discussion

Executive Director's Report

Commissioner's Comments

Old Business

New Business

CONTACT PERSON FOR MORE

INFORMATION: Toni Carbo Bearman, Executive Director, NCLIS (202) 653-6252.

May 6, 1982.

[S-709-82 Filed 5-10-82; 3:13 pm]

BILLING CODE 7527-01-M

14

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

May 20, 1982, 9 a.m., Closed Session

May 21, 1982, 8:30 a.m., Closed Session

May 21, 1982, 9:30 a.m., Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS: Friday, May 21, 9:30 a.m.:

1. Minutes—Open Session—March 1982 Meeting.

2. Chairman's Items.

3. Director's Report.

4. Grants, Contracts, and Programs.

5. Annual Business.

a. Annual Report of Executive Committee.

b. Report from Board Chairman.

c. Meeting Schedule for Calendar Year 1983.

d. Annual Consideration of National Science Board Committees.

e. Biennial Review of Delegations of Authority to Director and/or Executive Committee.

6. Principles Related to NSF-Supported Research Instrumentation and Facilities.

7. Board Representation at Site Visits, Annual Reviews, and Advisory Meetings.

8. Reports on Meetings of Board Committees.

9. Other Business.

10. Next Meetings.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION: Thursday, May 20, 9:00 a.m.:

A. Minutes—Closed Session—March 1982 Meeting.

B. Annual Elections.

1. Chairman and Vice Chairman (for two-year terms expiring May 1984).

2. Two Members of Executive Committee (for two-year terms expiring May 1984.)

C. NSB and NSF Staff Nominees.

Friday, May 21, 8:30 a.m.:

D. Grants, Contracts, and Programs.

CONTACT PERSON FOR MORE

INFORMATION: Ms. Margaret L. Windus, Executive Officer, NSB, 202/357-9582.

[S-701-82 Filed 5-10-82; 12:06 pm]

BILLING CODE 7555-01-M

15

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 10 a.m., May 22, 1982.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridges Road, Bethesda, Maryland 20814.

STATUS: Open.

MATTERS TO BE CONSIDERED:

10:00: Meeting—Board of Regents

(1) Approval of Minutes, 12 March 1982; (2)

Faculty Appointments; (3) Report—

Admissions; (4) Report—Associate Dean

for Operations—(a) Status of Funding, (b)

Program Objective Memorandum (POM),

and (c) Facilities Construction; (5) Report—

Chairman, Board of Regents; (6) Report—

President, USUHS—(a) Faculty

Compensation, (b) Appointments,

Promotions and Tensure Policy, (c)

Changes in General Procedures and

Delegations, (d) Continuing Medical

Education Program, (e) Graduate Medical

Education Program, and (f) USUHS Awards

New Business

Scheduled Meetings: October 14, 1982

CONTACT PERSON FOR MORE

INFORMATION: Frank Reynolds,

Executive Secretary of the Board 202/

295-3025.

M. S. Healy,

OSD Federal Register Liaison Officer,

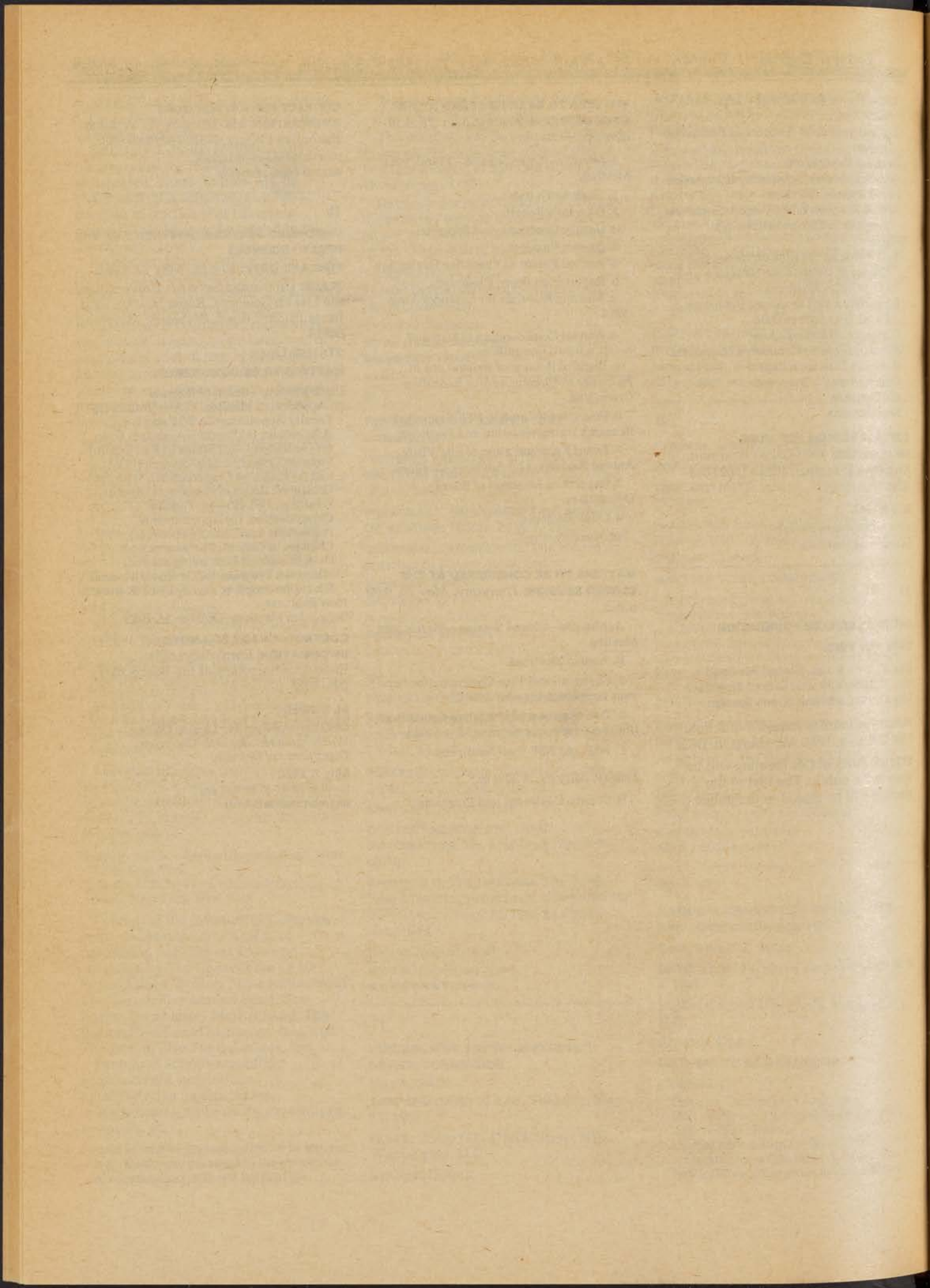
Washington Headquarters Services,

Department of Defense.

May 7, 1982.

[S-703-82 Filed 5-10-82; 12:07 pm]

BILLING CODE 3810-01-M



Federal Register

Wednesday
May 12, 1982

Part II

Environmental Protection Agency

Grants for Construction of Treatment
Works; Interim and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[WH-FRL 2073-6a]

Grants for Construction of Treatment Works

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule with request for comments.

SUMMARY: This document changes the regulation governing grants for construction of treatment works. The regulation includes only those items called for by the Clean Water Act including the Municipal Wastewater Treatment Construction Grant Amendments of 1981 and the minimum requirements necessary for effective program management. The changes clarify and simplify the regulation and thereby reduce project costs.

DATES: This interim final regulation is effective May 12, 1982. See also the section in the preamble on "Effective Date." Comments on the interim final regulation must be received on or before June 11, 1982.

ADDRESSES: Comments should be addressed to: Central Docket Section [A130], Attention: Docket No. G-81-5, Environmental Protection Agency, Washington, D.C. 20460.

The public may inspect the comments received on this interim final rule at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., between 8 a.m. and 4:30 p.m., business days.

FOR FURTHER INFORMATION CONTACT: Jane Magee, Office of Water Program Operations (WH-546), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-8253.

SUPPLEMENTARY INFORMATION: In keeping with the President's mandate to reduce the burden of government regulation, EPA has undertaken a comprehensive review of the construction grants regulation. Based on that review, revisions to the regulation were proposed in the November 6, 1981 Federal Register. The proposal reflected extensive experience with the program and comments received over the years from a broad spectrum of the program's constituents. In developing this regulation, the Agency consulted with a wide variety of organizations representing various participants in the program.

On December 29, 1981, the Municipal Wastewater Treatment Construction

Grant Amendments of 1981 Pub. L. 97-117 (1981 Amendments) were signed into law, making several basic modifications to the grants program. This interim final regulation, which is built on the Administration's commitment to reduce regulatory burdens to a minimum while maintaining the program's environmental and financial integrity, incorporates the November 6 proposal (revised in response to comments), and provisions to implement the 1981 amendments.

This regulation includes items required by statute—free of detailed procedures to be followed in carrying out the process—and those additional minimum requirements that EPA considers necessary for effective program management.

In conjunction with this effort to reduce regulatory requirements to a minimum, EPA will issue appropriate guidance documents. These guidance documents will not be regulations in disguise. The regulatory requirements are repeated in the guidance solely for continuity and clarity. If there appears to be a difference between the regulations and the guidance, the regulations govern. The guidance materials will contain information which is helpful to States and grantees in managing and carrying out the construction grants program. Use of the information in the guidance documents is to be discretionary. That is, other procedures adopted by the State or grantee, as appropriate, which are sufficient to meet the requirements of this regulation will be acceptable.

The first major guidance document, *Facilities Planning 81 (FP 81)*, was published last year. Its successor, *Construction Grants 82 (CG 82)*, will reflect this new emphasis on increased flexibility and will include guidance for planning, design, and building. Other guidance publications in the areas of innovative and alternative technology, operation and maintenance, financial planning and development of user charge systems are being developed. By linking these two efforts—reducing mandatory requirements and providing guidance—it is hoped that the greatest possible flexibility is provided to States and local governments to effectively carry out the construction grants program.

Although this subpart is the primary regulation governing the construction grants program, it is not the only one. Others that apply include EPA's procurement regulation (Part 33), the general grant regulation (Part 30), NEPA regulation (Part 6), public participation regulation (Part 25) and pretreatment

regulation (Part 403). Rather than repeat verbatim selected portions of these Parts in the construction grant regulation, this regulation will rely on the others and, where appropriate, those requirements are indicated by a simple cross reference. It is felt that this is a simpler approach and, more helpful to the States and grantees. Requirements of these other parts of regulation still apply to the construction grants program.

Following is a table showing the relationship of Subpart I to Subpart E:

Construction Grant Regulation

40 CFR Part 35

Subpart I		Subpart E
35.2000.....	Purpose and policy	35.900, .901, .903 and .912
35.2005.....	Definitions.....	35.905.
35.2010.....	Allotment; reallocation.....	35.910 et seq.
35.2015.....	State priority system and project priority list.....	35.915.
35.2020.....	Reserves.....	35.915-1
35.2023.....	Water quality management planning.....	1981 Amend.
35.2024.....	Combined sewer overflows.....	1981 Amend.
35.2025.....	Allowance and advance of allowance.....	1981 Amend.
35.2030.....	Facilities planning.....	35.917 et seq.
35.2032.....	Innovative alternative technologies.....	35.908.
35.2034.....	Privately owned individual systems.....	35.918
35.2040.....	Grant application.....	35.920 et seq.
35.2042.....	Review of grant applications.....	1981 Amend.
35.2050.....	Effect of approval or certification of documents.....	35.935-1.
35.2100.....	Limitations on award.....	35.925.
35.2101.....	Advanced treatment.....	New section
35.2102.....	Water quality management plans.....	35.925-2.
35.2103.....	Priority determination.....	35.925-3.
35.2104.....	Funding and other considerations.....	35.925-5.
35.2105.....	Debarment and suspension.....	New section
35.2106.....	Plan of operation.....	35.925-12.
35.2107.....	Intermunicipal service agreements.....	35.920-3.
35.2108.....	Segmented treatment works.....	New section
35.2109.....	Step 2+3.....	35.909.
35.2110.....	Access to individual systems.....	35.918-1.
35.2111.....	Revised water quality standards.....	1981 Amend.
35.2112.....	Marine waiver discharge applicants.....	1981 Amend.
35.2113.....	Environmental review.....	35.925-8.
35.2114.....	Value engineering.....	1981 Amend.
35.2116.....	Collection system.....	35.925-13.
35.2118.....	Pretreatment costs.....	35.925-18.
35.2120.....	Infiltration/inflow.....	35.927 et seq.
35.2122.....	Approval of user charge system and proposed sewer use ordinance.....	35.929-1, .935-13 and .927-4.
35.2123.....	Reserve capacity.....	1981 Amend.
35.2125.....	Treatment of compatible industrial waste.....	35.925-15.

Construction Grant Regulation—Continued

40 CFR Part 35

Subpart I		Subpart E
35.2130	Sewer use ordinance	35.927-4
35.2140	User charge system	35.929-1
35.2152	Federal share	35.930-4.
35.2200	Grant conditions	35.935 et seq.
35.2202	Step 2+3 projects	35.935-4.
35.2204	Project changes	35.935-11.
35.2206	Operation and maintenance	35.935-12.
35.2208	Adoption of sewer use ordinance and user charge system.	35.935-4.
35.2210	Land acquisition cost approval	New section.
35.2212	Project initiation and completion	35.935-9.
35.2214	Project performance	1981 Amendment.
35.2216	Notice of building completion and final inspection.	35.935-14.
35.2250	Determination of allowable costs.	35.940.
35.2260	Advance purchase of eligible land.	New section.
35.2262	Funding of field testing	1981 Amendment.
35.2300	Grant payments	35.945.
35.2350	Subagreement enforcement	35.970.
Appendix A	Determination of allowable costs.	35.940 et seq.

Description of Major Issues Related to the 1981 Amendments

Effective Date

This interim final regulation includes changes in response to comments on the proposed regulation of November 6, 1981 and revisions to implement the 1981 amendments to the Clean Water Act. The regulation is effective for all grants awarded on or after May 12, 1982. Facilities plans and design initiated under 40 CFR Subpart E continue to be subject to the requirements in Subpart E. Work done under Subpart E will be accepted for grant award under this subpart. Unless required by the 1981 amendments, no revisions to the facilities plan or design will be required.

The decision to publish this regulation as an interim final rule was based on several factors. First, revisions to the existing construction grants regulation, proposed in November 1981, were scheduled to be made final following a 60-day comment period. Second, EPA has had the benefit of substantial public comment as a result of the November proposal and the request for comments on a draft circulated in February containing recommended changes in the November draft to implement the 1981 amendments. Third, most major provisions of the 1981 amendments gave the Agency limited flexibility for implementation. Finally, a comprehensive regulation to implement the revised construction grants program is needed as early as possible to ensure the ongoing effectiveness of the

program. Thus it was felt that publication of this regulation as interim final was the most appropriate choice.

Elsewhere in this issue of the *Federal Register*, EPA is publishing a proposed Appendix B to be incorporated in this regulation when it becomes final. The appendix contains the procedures for determining allowances for planning and design work.

Allowance

One of the most significant changes in the program resulting from the 1981 amendments is the elimination of grants for planning (Step 1) and design (Step 2). In the future, an allowance will be provided to grantees for necessary facilities planning and design. EPA's proposal for an appendix to this regulation on determining allowances appears elsewhere in this issue of the *Federal Register*.

Under the allowance provision in the Act, non-Federal funds are used to pay for planning and design work at the time it is done. Therefore the laws and regulations governing grantees' conduct do not apply to this work undertaken prior to grant application. For example, EPA has determined that the new Part 33 regulation on procurement under assistance agreements will not apply to work for which an allowance is awarded. EPA is concerned, however, that improper activities by grantees or contractors not occur at this stage of the process and so has added a new provision to the regulation requiring applicants for grant assistance to certify that there has been no violation, during pre-application work, of any Federal, State or local law pertaining to fraudulent, unlawful or corrupt practices.

Advances

The 1981 amendments require States to reserve a portion up to 10 percent of their allotments to provide advances of the allowance to small communities which would otherwise be unable to undertake planning and design activities. Although the amendments do not prescribe a minimum amount, the Agency believes the Congress intended that a reasonable reserve be established. Designation of eligible applicants to receive an advance will be done entirely by the States.

Upon application by a State, a grant will be awarded to the State for advance of allowances to small communities. A State may request that the right to receive payments under the grant be assigned to specified potential grant applicants. Any community that has received an advance will have any later

allowance reduced by an amount equal to the advance.

Water Quality Emphasis

The 1981 amendments stress the importance of establishing priority for projects that address water quality management considerations. States, of course, continue to have full responsibility for determining project priorities. The regulation incorporates the concept of "priority water quality areas," which States will identify and use in setting priorities for projects. Revised regulations for water quality management planning (40 CFR Part 130) and water quality standards (40 CFR Part 131), and guidance for State preparation of section 305(b) reports will also use the concept of priority water quality areas for scheduling revisions to water quality standards, total daily maximum loads, and major permits, as well as focusing monitoring, enforcement and reporting efforts on critical water quality problems. Priority water quality areas will generally be water quality limited segments, *i.e.*, segments where applicable water quality standards are not attainable with application of technology-based effluent limitations to point sources.

Although this term has not been used in the regulations before, the concept is not new. For the purposes of construction grant funding and this regulation, priority water quality areas are specific stream segments or bodies of water where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from the municipal discharges will substantially restore surface or groundwater uses.

Within this context for setting priorities, the regulation requires an annual priority list with two sections, the fundable portion, consisting of those projects anticipated to be funded from the current allotment; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments. Although EPA's November 6 proposal did not require a planning portion, the 1981 amendments require long-range planning and tracking. States may use existing 1981 or 1982 priority lists through September 30, 1982 by which time they must have accepted lists that reflect the 1981 amendments in order to fund additional projects.

The 1981 amendments also require that States reserve not less than \$100,000 nor more than one percent of their annual allotment for water quality management planning. The regulation

provides an exception to the \$100,000 minimum for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas because of the small size of their allotments.

The 1 percent ceiling is interpreted as an optional maximum limit rather than as a required amount because the language of the amendments specifically indicates that the reserve is "not to exceed" one percent, and not that it shall be one percent. Also, the "not to exceed" language is identical to the language of the 205(g) reserve for State administration which provides for an optional maximum percentage rather than a required percentage. 40 CFR Part 130, currently being revised, will govern the use of those funds. Copies of the draft may be obtained from Carl Myers (WH554) USEPA, 401 M St. S.W., Washington, D.C. 20460.

NEPA Compliance

For NEPA compliance to be most effective, environmental issues must be addressed in conjunction with planning the project, and traditionally that has been done during Step 1. The elimination of Step 1 and Step 2 grants postpones official Federal involvement in the project until after planning and design are complete. To avoid the design of environmentally unsound alternatives, the regulation encourages applicants to confer with review agencies very early in the process and request, in writing, that necessary NEPA determinations be made. In this way, NEPA responsibilities can be met at the appropriate time, avoiding delay and added expense that could result from postponement.

Grantees currently in the facilities planning process with Step 1 grant assistance are bound by existing regulations and grant agreements to complete their environmental documents as planned and obtain a formal determination in accordance with Part 6 of this chapter.

Financial Capability

The 1981 amendments stress the importance of grantee's financial capability and their ability to finance adequate operations, maintenance and replacement of facilities through their user charge systems. Three of the "limitations on awards" (conditions that must be met before a grant can be awarded) are designed to ensure adequate financial capability and management of Federally funded treatment works. The applicant is required to demonstrate that it has the legal, institutional, managerial, and

financial capability to ensure adequate building and operation, maintenance and replacement of the treatment works. Further, the draft plan of operation, required at the time of application, must include "an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration." And finally, before awarding grant assistance, the Regional Administrator must approve a user charge system that will "produce adequate revenues required for the operation, maintenance and replacement of the system," and that contains an "adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation, maintenance and replacement of the treatment system." These requirements, in combination, are designed to ensure that Federally funded facilities will be financed and managed adequately to meet the requirements of the Clean Water Act.

Phased Segmented Projects

Completing treatment works in order to receive the benefits of improved water quality is a high priority of the program. The regulation encourages States to give priority to completion of phased/segmented projects that are already underway. It also sets criteria designed to ensure completion of waste treatment systems before segmenting or phasing a new project.

Project Performance

The purpose of EPA assistance is to build treatment works that have been planned and designed to meet the enforceable requirements of the Act. By executing a grant agreement, the grantee is obligated to build the project according to its approved design specifications and operate and maintain the project during its useful life to meet the enforceable requirements of the Act.

This regulation requires the grantee to reach this performance goal within a year after the project has been put into use for its intended purpose. The costs of architectural, engineering, legal, technical and other services necessary to assure that the project is built according to its design drawings and specifications are allowable project costs.

The date of initiation of operation is determined by the grantee, in consultation with the design engineer and included in the project schedule. To assist in operating the project during the first full year, the grantee shall procure the services of the engineer principally responsible for providing design

services or the engineer principally responsible for providing project management services. The grantee is not prohibited from requiring, at least through the end of the first year of operation, sufficient assurances, guarantees or indemnity or other contractual requirements to achieve this goal.

At the end of the first year of operation, the grantee must certify to the Regional Administrator whether the project is capable of meeting its design specifications and the enforceable requirements of the Act. If the project is not affirmatively certified, the grantee must provide a corrective action report. The ultimate cost of bringing the project into compliance is the responsibility of the grantee except, as provided in this regulation, for the modification or replacement of innovative or alternative technology projects.

If, at the end of the first year, the grantee is unable to affirmatively certify the project, the grantee must also commit itself to a reasonable date on which an affirmative certification to the Regional Administrator can be made. If the grantee does not bring the project into compliance with the design specifications and enforceable requirements of the Act, EPA will take appropriate and prompt remedial action.

Step 2+3

The 1981 amendments raise the limit on total project cost for projects eligible for a Step 2+3 grant to \$8 million. Although the 1981 Amendments prohibit the award of grants solely for facilities planning or design, they allow EPA to continue to award combined design and building grants (Step 2+3 grants). The amendments do not require changes in the current Step 2+3 process, but based on Congress' intent to reduce EPA involvement in grantees' design activities, the Agency determined it would be appropriate to use the allowance system for the design segment of the step 2+3 project. The amount of the allowance will be based on the estimated Step 3 building cost in the Step 2+3 grant application. To assure adequate funds are available for design, the Agency has determined that it is appropriate to pay 30 percent of the Federal share of the allowances as soon as requested after the Step 2+3 grant award. EPA will pay an additional 30 percent when the design is 50 percent complete. The final portion of the allowance will be paid after the grantee awards the prime subagreement for building the project (see proposed Appendix B elsewhere in this issue of the Federal Register).

Combined Sewer Overflow

The regulation incorporates two provisions of the 1981 amendments directly related to funding the correction of combined sewer overflow problems:

(1) Section 35.2024 deals with the use after September 30, 1982, of funds to be appropriated under section 201(n)(2) of the Act for addressing impaired uses in marine bays and estuaries or public health risks resulting from combined sewer overflows.

(2) Section 35.2024 also states that after September 30, 1984 (when correction of combined sewer overflows is no longer an eligible category), the governor may elect to use the regular State allotment to address impaired uses in priority water quality areas due to the impacts of combined sewer overflows.

The regulation reflects the language of the conference committee report on H.R. 4503, placing restrictions on the funding of combined sewer overflow correction. Directed at both provisions for funding of combined sewer overflow projects, this language requires States to demonstrate to EPA the necessity for the project and the specific benefits to be achieved.

Innovative and Alternative (I/A) Technology

The 1981 amendments continue and expand the innovative and alternative program by providing increased grants for I/A projects and the I/A set-aside. The regulation includes a flexible set-aside which ranges from a minimum of 4 percent up to 7½ percent at the discretion of the Governor; provisions to make grants for innovative and alternative technologies, in amounts up to 20 percent more than the Federal share for grants for conventional technologies as long as the Federal share totals no more than 85 percent; and provisions to include field testing for verification of design parameters for higher risk technologies as an eligible preaward cost. EPA is incorporating the innovative and alternative technology guidelines from Appendix E of the existing regulation into a comprehensive guidance document.

State Certification

The 1981 amendments allow States with delegated program authority to certify that grant applications comply with all applicable Federal requirements. The certification must be supported by documentation specified in the delegation agreement, and the Regional Administrator shall accept the certification unless he determines the State has failed to adequately establish grounds for the certification or that an

applicable requirement has not been met. The amendments mandate that EPA accept or reject in writing a fully certified application within 45 days of receipt or the application is automatically approved.

Collection Systems

One commenter objected to the requirement in § 35.2216 that new collection systems can only be funded where the municipality was in existence on October 18, 1972 and the bulk of the expected flow is from population in existence on October 18, 1972. This provision is a revision of the current § 35.925-13 which contains the same 1972 population requirement. The commenter suggests that the 1981 amendments extended the base data for new collection systems to December 29, 1981. We found no support for this suggestion in the amendments or the legislative history. To the contrary, the legislative history indicates that any collection systems funded before their eligibility expires on September 30, 1984, will be constructed to serve existing needs for a community in existence in 1972 and not for future growth.

Description of Other Major Issues

Infiltration/Inflow

To simplify the process of determining whether the treatment works will be subject to excessive infiltration or inflow, the regulation incorporates baseline figures for amounts of infiltration and inflow that are considered non-excessive.

For infiltration, if the treatment plant flow chart or a single point flow monitoring at the plant shows that the average daily flow during peak groundwater period is less than 120 gallons per capita per day, (gpcd), the system does not have excessive infiltration and further analysis for infiltration is not required. (The nonexcessive infiltration rate includes two flow components: A national average domestic wastewater flow of 70 gpcd and a nonexcessive infiltration of 50 gpcd.) For inflow, if the rainfall-induced peak flow does not exceed 2.5 times the average design flow for the treatment plant, the system does not have excessive inflow and further analysis for inflow is not required. (It should be noted that 2.5 times the average design flow is approximately equivalent to the peak diurnal flow generally used for treatment plant design.)

When the criteria are exceeded, the grantee may either proceed with further study of the sewer system and determine the level of nonexcessive

infiltration and inflow based on a cost-effectiveness analysis; or, may proceed with treatment plant design without any further analysis of the sewer system.

Under the first option, the municipality may select any cost effective methods for evaluating the sewer system under the study. Upon completion, the municipality will propose a sewer rehabilitation program and specify the quantity of excessive infiltration and inflow to be removed from the system. The results of this rehabilitation program will be part of the grantee's certification of project performance at the end of the first year's operation of the facility. The grantee will be responsible for taking corrective action to resolve any problems which may result from an ineffective sewer rehabilitation program.

Under the second option, if the grantee chooses to build a project to treat flows in excess of the baseline amounts, grant assistance will be awarded only for the baseline capacity of 120 gpcd. The grantee must demonstrate that the complete waste treatment system is cost-effective, that funds for building the treatment works to treat the additional capacity will be available, and that an adequate user charge system will be implemented.

Compatible Industrial Wastewater

Section 35.2125(a) sets a test which stipulates that grants will be provided for treatment works capacity to transport or treat compatible industrial wastewater only if the treatment works would be eligible for grant assistance in the absence of the proposed industrial capacity. If the treatment works is justified by the need to treat domestic wastewater, then its scope may be expanded to accommodate compatible industrial wastewater. If, on the other hand, the treatment works would not be needed but for the presence of industrial sources, EPA will not award a grant.

While this provision is not explicit in the statute, it reflects EPA's traditional policy, which is derived from the legislative history of the Clean Water Act. It is also a reasonable and necessary management provision, given the need to limit Federal funds to support projects with the greatest potential for public benefit.

Reconstruction Costs

EPA's policy of not providing Federal funds a second time for a failed project is included in this regulation as an unallowable cost in Appendix A. This does not represent a new policy, but it was included in the regulation for the first time in the November 6, 1981

proposal. In response to the comments received on the proposed regulation, this section has been revised to incorporate more flexibility.

Advanced Treatment Reviews

EPA Headquarters reviews of advanced treatment projects were initiated at the direction of Congress in March 1979. The 1978 oversight and appropriations hearings had focused attention on the high costs and often marginal benefits of advanced treatment projects. In action approving the FY 1979 appropriation for the construction grants program, the House and Senate Appropriations Conference Committee agreed "that grant funds may be used for construction of new facilities providing treatment greater than secondary only if the incremental cost of the advanced treatment is \$1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements." The incremental dollar limit for Headquarters review was raised from \$1 million to \$3 million in FY 1980. The FY 1981 appropriations legislation continued the Headquarters review requirements.

Review procedures were set forth in EPA policy issued in June 1979. EPA agreed to revise the procedures in May 1980, and published a revised draft in June 1980. A final draft is nearing publication.

The regulation states, as a limitation on award, the requirement of the appropriations legislation that, prior to the award of grant assistance, there be a special review under the advanced treatment policy of any project requiring advanced treatment. EPA recommends that the proposed advanced treatment projects be submitted for review upon completion of facility planning. Since the Congress has expressly restricted EPA from delegating the Headquarters review of projects with incremental advanced treatment costs more than \$3 million, such reviews are not subject to the 45-day review period provided for states with certification authority under § 35.2042.

Public Participation

Several commenters expressed concern that, with the exception of the requirement for public hearings in conjunction with developing State priority systems and project priority lists, the proposed regulation relies on Part 25 to supply all further requirements necessary to fully involve the public in decisions relating to the construction grants program. EPA is fully committed to public participation

in all its programs and believes that Part 25 affords every opportunity necessary and available under the Clean Water Act for public participation in the construction grants program. In addition, the Agency intends to propose revisions to Part 25 which will both simplify and strengthen the regulation, thereby reinforcing EPA's commitment to public participation.

However, because the elimination of Step 1 and 2 grants effectively prohibits Federal involvement in facilities planning and design, neither provisions of this subpart nor of Part 25 apply to activities of a potential grantee prior to submission of the Step 3 grant application. Grantees who request an early determination of NEPA compliance can take advantage of involving the public in Steps 1 and 2 through application of public participation requirements of Part 6. Furthermore, this regulation requires the State to certify at the time of application that there has been adequate public participation in accordance with State and local laws.

Grantee Certification

A section of the proposed regulation would have permitted major grantees, if approved as such by the State and Regional Administrator, to certify compliance with various EPA requirements after approval of their facilities plans. Neither EPA nor the States would review documents certified by those grantees.

That provision has not been included in this interim final regulation. The statutory prohibition of Federal grant assistance for Step 1 and Step 2 will reduce the delays grantee certification was designed to eliminate.

Delegation

For the sake of simplicity, the regulation refers to the role of the Regional Administrators. Delegation to State agencies remains an integral part of construction grants program management. As stated in § 35.2000(c), to the extent that the Regional Administrator delegates responsibility to a State agency under a delegation agreement, the term "Regional Administrator" is to be read "State agency."

Project Schedule

The regulation requires that a timetable of key project events be included in the grant application. The advice of the grantee's design engineer should be sought when developing the schedule. The schedule should include important dates regarding procurement actions, building schedule and operation

of the project. If the grantee has multiple projects, he must coordinate each project's schedule with the others and with the State's project priority list. Any change in the project schedule will require a formal grant amendment. This requirement is necessary to insure the continued coordination of project completion with permit and compliance schedules, court orders and State administrative orders.

Work by Debarred or Suspended Persons

EPA recently published a notice of proposed rulemaking establishing procedures for debarments and suspensions under EPA assistance programs, 40 CFR Part 32 (47 FR 7194, February 17, 1982). Those proposed regulations state that it is EPA's policy to do business only with persons who properly use Federal assistance.

The purpose of § 35.2105 is to inform EPA whether the applicant awarded a contract for planning or design work to a debarred, suspended, or excluded individual, organization, or unit of government. If the applicant certifies that it has made such an award, EPA shall closely examine the facilities plans, and design drawings and specifications to determine whether to award a Step 3 grant or take other appropriate action.

Project, Treatment Works and Complete Waste Treatment System

The terms project, treatment works and complete waste treatment system have specific meanings in this regulation and should not be used interchangeably. This reflects a consistency with the Act and EPA's general regulations for assistance programs (40 CFR Part 30).

Project refers only to the activities or tasks identified in the grant agreement.

The definition of treatment works is essentially the same as that contained in section 212 of the act. In the context of the Clean Water Act, this is a broad definition, including "any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes."

A complete waste treatment system is the total of all elements necessary for the transport, treatment and ultimate disposal of treated wastewater and residuals.

Building

The term "building" has been used throughout this regulation to describe the principal activity to be undertaken in the grants program. That is, the program provides assistance for the

erection, acquisition, alteration, remodeling, improvement or extension of facilities to transport and treat wastewater. The term "building" is used in this regulation rather than "construction" (the term used in the past) because "construction" is defined in the Act to include facilities planning and design. EPA can no longer award grant assistance solely for those activities.

Appendix A: Allowable Costs

Appendix A has been developed to consolidate all information on allowable and unallowable costs. Although the Appendix contains primarily existing Agency policy found in 40 CFR Part 35, the Handbook of Procedures and Program Requirement Memoranda, it also reflects new policies designed to reduce allowability necessitated by limited program funds. To simplify use of Appendix A it has been organized by type of cost, i.e., travel, subagreement costs, facilities planning, small systems, equipment, etc.

Regulation Development Process

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works. Applicants must comply with all applicable requirements of the Office of Management and Budget (OMB) Circular A-95.

Under Executive Order 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing some of these changes to implement Pub. L. 96-483, the October 21, 1980, amendments to the Clean Water Act, others to reduce the complexity of the regulation, and others to implement the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117). I have determined this regulation is not a major regulation, and thus it is not subject to the impact analysis requirements of Executive Order 12291. Under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* the information provisions in this rule have been (or will be) submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approves them. A notice of that approval will be published in the Federal Register.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting

and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Dated: May 4, 1982.

John W. Hernandez, Jr.

Acting Administrator.

PART 35—STATE AND LOCAL ASSISTANCE

For the reasons outlined in the preamble, Part 35 of Title 40, Code of Federal Regulations, is amended as set forth below.

40 CFR Part 35 is amended by adding a new Subpart I, to read as follows:

* * * * *

Subpart I—Grants for Construction of Treatment Works

- Sec.
- 35.2000 Purpose and policy.
 - 35.2005 Definitions.
 - 35.2010 Allotment; reallocation.
 - 35.2015 State priority system and project priority list.
 - 35.2020 Reserves.
 - 35.2023 Water quality management planning.
 - 35.2024 Combined sewer overflows.
 - 35.2025 Allowance and advance of allowance.
 - 35.2030 Facilities planning.
 - 35.2032 Innovative and alternative technologies.
 - 35.2034 Privately owned individual systems.
 - 35.2040 Grant application.
 - 35.2042 Review of grant applications.
 - 35.2050 Effect of approval or certification of documents.
 - 35.2100 Limitations on award.
 - 35.2101 Advanced treatment.
 - 35.2102 Water quality management plans.
 - 35.2103 Priority determination.
 - 35.2104 Funding and other considerations.
 - 35.2105 Debarment and suspension.
 - 35.2106 Plan of operation.
 - 35.2107 Intermunicipal service agreements.
 - 35.2108 Segmented treatment works.
 - 35.2109 Step 2+3.
 - 35.2110 Access to individual systems.
 - 35.2111 Revised water quality standards.
 - 35.2112 Marine waiver discharge applicants.
 - 35.2113 Environmental review.
 - 35.2114 Value engineering.
 - 35.2116 Collection system.
 - 35.2118 Preaward costs.
 - 35.2120 Infiltration/Inflow.
 - 35.2122 Approval of user charge system and proposed sewer use ordinance.
 - 35.2123 Reserve capacity.
 - 35.2125 Treatment of compatible industrial waste.
 - 35.2130 Sewer use ordinance.
 - 35.2140 User charge system.
 - 35.2152 Federal share.
 - 35.2200 Grant conditions.
 - 35.2202 Step 2+3 projects.
 - 35.2204 Project changes.

Sec.

- 35.2206 Operation and maintenance.
 - 35.2208 Adoption of sewer use ordinance and user charge system.
 - 35.2210 Land acquisition cost approval.
 - 35.2212 Project initiation and completion.
 - 35.2214 Project performance.
 - 35.2216 Notice of building completion and final inspection.
 - 35.2250 Determination of allowable costs.
 - 35.2260 Advance purchase of eligible land.
 - 35.2262 Funding of field testing.
 - 35.2300 Grant payments.
 - 35.2350 Subagreement enforcement.
- Appendix A Determination of allowable costs.

Authority: Sections 101(e), 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through 217, 304(d)(3), 313, 501, 502, 511 and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

Subpart I—Grants for Construction of Treatment Works

§ 35.2000 Purpose and policy.

(a) The primary purpose of Federal grant assistance available under this subpart is to assist municipalities in meeting enforceable requirements of the Clean Water Act, particularly, applicable National Pollutant Discharge Elimination System (NPDES) permit requirements.

(b) This subpart supplements EPA's general grant regulation (Part 30 of this subchapter), its public participation regulation (Part 25 of this subchapter), its procurement regulation (Part 33 of this chapter), its debarment regulation (Part 32 of this subchapter) and its NEPA regulation (Part 6 of this chapter), and establishes requirements for Federal grant assistance for the building of wastewater treatment works. EPA may also find it necessary to publish other requirements applicable to the construction grants program in response to Congressional action and execute orders.

(c) EPA's policy is to delegate determinations on individual projects to State agencies to the maximum extent possible (see Subpart F). Throughout this subpart we have used the term Regional Administrator. To the extent that the Regional Administrator delegates responsibility for determining compliance with the requirements of this subpart to a State agency under a delegation agreement (§ 35.1030), the term Regional Administrator may be read State agency. This paragraph does not affect the rights of citizens, applicants or grantees provided in Subpart F.

(d) In accordance with the Federal Grant and Cooperative Agreement Act (Pub. L. 95-224) EPA will, when substantial Federal involvement is

anticipated, award assistance under cooperative agreements. Throughout this subpart we have used the terms grant and grantee but those terms may be read cooperative agreement and recipient if appropriate.

(e) From time to time EPA publishes technical and guidance materials on various topics relevant to the construction grants program. Grantees may find this information useful in meeting requirements in this subpart. These publications, including the MCD and FRD series, may be ordered from: EPA, 401 M St. SW, Room 1115 ET, WH 547, Washington, DC 20460. In order to expedite processing of requests, persons wishing to obtain these publications should request a copy of EPA form 7500-21 (the order form listing all available publications), from EPA Headquarters, Municipal Construction Division (WH-547) or from any Regional Office of EPA.

§ 35.2005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Parts 30 and 33.

(b) As used in this subpart, the following words and terms mean:

(1) "Act." The Clean Water Act (33 U.S.C. 1251 et seq., as amended).

(2) "Ad valorem tax." A tax based upon the value of real property.

(3) "Alternative technology." Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productivity recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and on-site systems.

(4) "Alternative to conventional treatment works for a small community." For purposes of §§ 35.2020 and 35.2032 a treatment works in a small community using innovative or alternative technology.

(5) "Architectural or engineering services." Consultation, investigation, reporting and design services offered within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the grantee is located.

(6) "Best Practicable Waste Treatment Technology (BPWTT)." The cost-effective technology that can treat wastewater, combined sewer overflows,

nonexcessive infiltration and inflow and residuals in publicly owned or individual wastewater treatment works, to meet the applicable provisions of:

(i) 40 CFR Part 133—secondary treatment of wastewater;

(ii) 40 CFR Part 125, Subpart G—marine discharge waivers;

(iii) 40 CFR 122.62(d)—more stringent water quality standards and State standards; or

(iv) 41 Federal Register 6190—Alternative Waste Management Techniques for Best Practicable Waste Treatment (treatment and discharge, land application techniques and utilization practices, and reuse).

(7) "Building." The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

(8) "Collector sewer." The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(i) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost-effective than parallel sewers; and

(ii) Pumping units and pressurized lines serving individual structures or groups of structures when such units are cost-effective and are owned and maintained by the grantee.

(iii) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with alternatives to conventional treatment works in small communities.

(9) "Combined sewer." A sewer that is designed as a sanitary sewer and a storm sewer.

(10) "Compatible industrial wastewater." Wastewater that is produced by an industrial user, has a pollutant strength and other characteristics similar to those of domestic wastewater, and can be efficiently and effectively transported and treated with domestic wastewater. This definition includes wastewater from sanitary conveniences at an industrial user's facility.

(11) "Complete waste treatment system." A complete waste treatment system consists of all the treatment works necessary to meet the requirements of title III of the Act, involving: (i) The transport of wastewater from individual homes or

buildings to a plant or facility where treatment of the wastewater is accomplished; (ii) the treatment of the wastewater to remove pollutants; and (iii) the ultimate disposal, including recycling or reuse, of the treated wastewater and residues which result from the treatment process.

(12) "Construction." Any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative wastewater treatment processes and techniques (excluding operation and maintenance) meeting guidelines promulgated under section 304(d)(3) of the Act, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(13) "Conventional technology." Wastewater treatment processes and techniques involving the treatment of wastewater at a centralized treatment plant by means of biological or physical/chemical unit processes followed by direct point source discharge to surface waters.

(14) "Domestic wastewater." Wastewater of the type commonly introduced into a treatment works by residential users.

(15) "Enforceable requirements of the Act." Those conditions or limitations of section 402 or 404 permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act or applicable State laws. If a permit has not been issued, the term shall include any requirement which, in the Regional Administrator's judgment, would be included in the permit when issued. Where no permit applies, the term shall include any requirement which the Regional Administrator determines is necessary for the best practicable waste treatment technology (BPWTT) to meet applicable criteria.

(16) "Excessive infiltration/inflow." In accordance with §§ 35.2005(b)(27) and (28), and § 35.2120, the quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

(17) "Field testing." Practical and generally small-scale testing of

innovative or alternative technologies directed to verifying performance and/or refining design parameters not sufficiently tested to resolve technical uncertainties which prevent the funding of a promising improvement in innovative or alternative treatment technology.

(18) *"Individual systems."* Privately owned alternative wastewater treatment works (including dual waterless/gray water systems) serving one or more principal residences or small commercial establishments. Normally these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. These systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

(19) *"Industrial user."* Any nongovernmental, nonresidential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

Division A. Agriculture, Forestry, and Fishing
Division B. Mining
Division D. Manufacturing
Division E. Transportation, Communications, Electric, Gas, and Sanitary Services
Division I. Services

(20) *"Infiltration."* Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.

(21) *"Inflow."* Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

(22) *"Initiation of operation."* The date specified by the grantee on which use of the project begins for the purposes that it was planned, designed, and built.

(23) *"Innovative technology."* Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant

advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.

(24) *"Interceptor sewer."* A sewer which is designed for one or more of the following purposes:

(i) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(ii) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(iii) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(iv) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

(25) *"Interstate agency."* An agency of two or more States established under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of water pollution.

(26) *"Municipality."* A city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under section 208 of the Act.

(i) This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district or similar entity or an integrated waste management facility, as defined in section 201(e) of the Act, which has as one of its principal responsibilities the treatment, transport, or disposal of domestic wastewater in a particular geographic area.

(ii) This definition excludes the following:

(A) Any revenue producing entity which has as its principal responsibility an activity other than providing wastewater treatment services to the general public, such as an airport, turnpike, port facility or other municipal utility.

(B) Any special district (such as school district or a park district) which has the responsibility to provide wastewater treatment services in

support of its principal activity at specific facilities, unless the special district has the responsibility under State law to provide wastewater treatment services to the community surrounding the special district's facility and no other municipality, with concurrent jurisdiction to serve the community, serves or intends to serve the special district's facility or the surrounding community.

(27) *"Nonexcessive infiltration."* The quantity of flow which is less than 120 gallons per capita per day (domestic base flow and infiltration) or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

(28) *"Nonexcessive inflow."* The rainfall induced peak inflow rate which is less than the average design flow by 2.5 times (approximately equivalent to the normal peak hydraulic design for diurnal flow) and which results in chronic operational problems during storm events. These problems may include surcharging backups, bypasses, and overflows.

(29) *"Operation and Maintenance."* Activities required to assure the dependable and economical function of treatment works.

(i) *Maintenance:* Preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

(ii) *Operation:* Control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management; records, laboratory control, process control, safety and emergency operation planning.

(30) *"Principal residence."* For the purposes of § 35.2034, the habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.

(31) *"Project performance standards."* The performance and operations requirements applicable to a project including the enforceable requirements of the Act and the specifications which the project is planned and designed to meet.

(32) *"Priority water quality areas."* For the purposes of § 35.2015, specific stream segments or bodies of water, as determined by the State, where municipal discharges have resulted in the impairment of a designated use or significant public health risks, and where the reduction of pollution from

such discharges will substantially restore surface or groundwater uses.

(33) *"Project schedule."* A timetable specifying the dates of key project events including public notices of proposed procurement actions, subagreement awards, issuance of notice to proceed with building, key milestones in the building schedule, completion of building, initiation of operation and completion of the project.

(34) *"Replacement."* Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(35) *"Sanitary sewer."* A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

(36) *"Services."* A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents which may result from the contractor's labor, time or efforts. This term shall not include employment agreements or collective bargaining agreements.

(37) *"Small commercial establishments."* For purposes of § 35.2034 private establishments such as restaurants, hotels, stores, filling stations, or recreational facilities and private, nonprofit entities such as churches, schools, hospitals, or charitable organizations with dry weather wastewater flows less than 25,000 gallons per day.

(38) *"Small community."* For purposes of §§ 35.2020(b) and 35.2032, any municipality with a population of 3,500 or less, or highly dispersed sections of large municipalities, as determined by the Regional Administrator.

(39) *"State."* A State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(40) *"State agency."* The State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of water pollution.

(41) *"Storm sewer."* A sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

(42) *"Treatment works."* Any devices and systems for the storage, treatment,

recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works. These include intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alternations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems before land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

(43) *"Treatment works phase or segment."* A treatment works phase or segment may be any cost-effective portion of a complete waste treatment system described in a facilities plan under § 35.2030, which can be identified as a contract or discrete subitem or subcontract. Completion of building of a treatment works phase or segment may, but need not in and of itself, result in an operable treatment works.

(44) *"Useful life."* The period during which a treatment works is planned and designed to be operated.

(45) *"User charge."* A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

(46) *"Value engineering."* A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

§ 35.2010 Allotment; reallocation.

(a) Allotments are made on a formula or other basis which Congress specifies for each fiscal year. The allotment for each State and the availability period shall be announced each fiscal year in the Federal Register.

(b) Unless otherwise provided by Congress, all sums allotted to a State under Section 205 of the Act shall remain available for obligation until the end of one year after the close of the fiscal year for which the sums were authorized. Except as provided in § 35.2020(a), sums not obligated at the end of that period shall be immediately reallocated on the basis of the same ratio as applicable to sums allotted for the then-current fiscal year, but none of the funds reallocated shall be made available to any State which failed to obligate any of the fiscal year funds being reallocated. Any sum made available to a State by reallocation under this section shall be in addition to any funds otherwise allotted to such State for grants under this subpart during any fiscal year and the reallocated funds shall be treated in the same manner as the most recent allotment.

(c) Sums which are deobligated before the reallocation date for those funds shall be reissued to the same State and in the same manner as the allotment from which such funds were derived. The date funds are deobligated is the date they are reissued to the Regional Administrator.

(d) Sums which are deobligated after the reallocation date for those funds shall be reissued to the same State and treated in the same manner as the most recent allotment before the deobligation. The date funds are deobligated is the date they are reissued to the Regional Administrator.

§ 35.2015 State priority system and project priority list.

(a) *General.* The Regional Administrator will award grant assistance from annual allotments to projects on a State project priority list developed in accordance with an approved State priority system. The State priority system and list must be designed to achieve optimum water quality management consistent with the goals and requirements of the Act. All projects for building treatment works to be funded by EPA must be included on a state project priority list, except training facilities funded under section 109(b) of the Act.

(b) *State priority system.* The State priority system describes the methodology used to rank projects that are considered eligible for assistance. The priority system should give high priority to projects in priority water quality areas. The priority system may also include the administrative, management, and public participation procedures required to develop and revise the State project priority list. The

priority system includes at least the following elements:

(1) *Criteria.* (i) The priority system shall include at least the following criteria for ranking projects:

(A) The impairment of classified water uses resulting from existing municipal pollutant discharges;

(B) The extent of surface or ground water use restoration or public health improvement resulting from the reduction in pollution.

(ii) The State may also include in its priority system for ranking projects other criteria, such as the use of innovative or alternative technology; the need to complete a waste treatment system for which a grant for a phase or segment was previously awarded, and; the category of need and the existing population affected.

(2) *Categories of need.* All projects must fit into at least one of the categories of need described in this paragraph to be eligible for funding, except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section. States will have sole authority to determine the priority for each category of need.

(i) Before October 1, 1984, these categories of need shall include at least the following:

(A) Secondary treatment (category I);

(B) Treatment more stringent than secondary (category II);

(C) Infiltration/inflow correction (category IIIA);

(D) Major sewer system rehabilitation (category IIIB);

(E) New collector sewers and appurtenances (category IVA);

(F) New interceptors and appurtenances (category IVB);

(G) Correction of combined sewer overflows (category V).

(ii) Except as provided in paragraphs (b)(2)(iii) and (b)(2)(iv) of this section, after September 30, 1984, these categories of need shall include only the following:

(A) Secondary treatment or any cost-effective alternative;

(B) Treatment more stringent than secondary or any cost-effective alternative;

(C) New interceptors and appurtenances; and

(D) Infiltration/inflow correction.

(iii) After September 30, 1984, up to 20 percent (as determined by the Governor) of a State's annual allotment may be used for categories of treatment works other than those listed in paragraph (b)(2)(ii) above.

(iv) After September 30, 1984, notwithstanding paragraph (b)(2)(ii) of this section, the Governor may include in the priority system a category for

projects needed to correct combined sewer overflows which result in impaired uses in priority water quality areas. Only projects which comply with the requirements of § 35.2024(a) may be included in this category.

(c) *Project priority list.* The State's annual project priority list is an ordered listing of projects for which the State expects Federal financial assistance. The priority list contains two portions: the fundable portion, consisting of those projects anticipated to be funded from the current allotment; and the planning portion, consisting of projects anticipated to be funded from future authorized allotments.

(1) The State shall develop the project priority list consistent with the criteria established in the approved priority system. In ranking projects, the State must also consider total funds available, needs and priorities set forth in areawide water quality management plans, and any other factors contained in the State priority system.

(2) The list shall include an estimate of the eligible cost of each project on it.

(d) *Public participation.* (1) In addition to any requirements in 40 CFR Part 25, the State shall hold public hearings as follows:

(i) Before submitting its priority system to the Regional Administrator for approval and before adopting any significant change to an approved priority system; and

(ii) Before submitting its annual project priority list to the Regional Administrator for acceptance and before revising its priority list unless the State agency and the Regional Administrator determine that the revision is not significant.

(2) Public hearings may be conducted as directed in the State's continuing planning process document or may be held in conjunction with any regular public meeting of the State agency.

(e) *Regional Administrator review.* The State must submit its priority system, project priority list and revisions of the priority system or priority list to the Regional Administrator for review.

(1) States must revise their priority systems to conform to the requirements of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Pub. L. 97-117. Each State must submit its revised priority system and project priority list developed in accordance with its system by September 1, 1982. No project will be funded after September 30, 1982, unless it is contained in a priority list reflecting Pub. L. 97-117 which has been accepted by the Regional Administrator.

(2) After submission and approval of the initial priority system and submission and acceptance of the project priority lists under paragraph (c) of this section, the State may revise its priority system and list from time to time as necessary.

(3) The Regional Administrator shall review the State priority system and any revisions to insure that they are designed to obtain compliance with the enforcement requirements of the Act as defined in § 35.2005(b)(10). The Regional Administrator shall complete review of the priority system within 30 days of receipt of the system from the State and will notify the State in writing of approval or disapproval of the priority system, stating any reasons for disapproval.

(4) The Regional Administrator will review the project priority list to insure compliance with the State's approved priority system. The Regional Administrator will complete review of the project priority list within 30 days of receipt from the State and will notify the State in writing of acceptance or rejection, stating the reasons for the rejection. Any project which is not contained on an accepted priority list will not receive funding.

(f) *Compliance with the enforceable requirements of the Act.* (1) Except as limited under paragraph (f)(2) of this section, the Regional Administrator, after a public hearing, shall require the removal of a specific project or portion thereof from the State project priority list based on a determination that it will not contribute to compliance with the enforceable requirements of the Act.

(2) The Regional Administrator shall not require removal of projects in categories under paragraphs (b)(2)(i)(D) through (b)(2)(i)(G) of this section which do not meet the enforceable requirements of the Act unless the total Federal share of such projects would exceed 25 percent of the State's annual allotment.

§ 35.2020 Reserves.

In developing its priority list the State shall provide for the establishment of reserves required or authorized under this section. The amount of each mandatory reserve shall be based on the allotment to each State from the annual appropriation under § 35.2010. The State may also establish other reserves which it determines appropriate. States may request the Regional Administrator to release funds in optional reserves or optional portions of required reserves under paragraphs (a), (b), (c), (d) and (e) of this section for funding projects at any time before the reallocation date.

Except for the reserve under paragraph (a) of this section, if optional reserves are not obligated or released before the allotment date, they shall be subject to reallocation.

(a) *Reserve for State management assistance grants.* Each State may request that the Regional Administrator reserve, from the State's annual allotment, up to 4 percent of the State's allotment based on the amount authorized to be appropriated, or \$400,000, whichever is greater, for State management assistance grants under Subpart F of this part. Grants may be made from these funds to cover the costs of administering activities delegated or scheduled to be delegated to a State. Funds reserved for this purpose that are not obligated by the end of the allotment period will be added to the amounts last allotted to a State. These funds shall be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for alternative systems for small communities.* Each State with 25 percent or more rural population (as determined by population estimates of the Bureau of Census) shall reserve 4 percent of the State's annual allotment for alternatives to conventional treatment works for small communities. The Governor of any non-rural State may reserve up to 4 percent of that State's allotment for the same purpose. In States where the reserve is mandatory, these funds shall be reallocated if not obligated during the allotment period.

(c) *Reserve for innovative and alternative.* Each State shall reserve not less than 4 percent nor more than 7½ percent from its annual allotment to increase the Federal share of grant awards under § 35.2032 for projects which use innovative or alternative wastewater treatment processes and techniques. Of this amount not less than one-half of one percent of the State's allotment shall be set aside to increase the Federal grant share for projects using innovative processes and techniques. The mandatory 4 percent reserve shall be reallocated if not used for this purpose during the allotment period.

(d) *Reserve for water quality management.* Each State shall reserve not less than \$100,000 nor more than 1 percent from its FY 1982 and subsequent annual allotments, to carry out water quality management planning under § 35.2023, except that in the case of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Marianas, a reasonable amount shall be reserved for this

purpose. Funds reserved for this purpose shall be reallocated if not used for this purpose during the allotment period.

(e) *Reserve for Advances of Allowance.* Each State shall reserve a reasonable portion of its annual allotment not to exceed 10 percent for advances of allowance under § 35.2025. Funds reserved for this purpose shall be reallocated if not used for this purpose during the allotment period.

§ 35.2023 Water Quality Management Planning.

(a) From funds reserved under § 35.2020(d) the Regional Administrator shall make grants to the States to carry out water quality management planning including but not limited to:

(1) Identifying most cost-effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(2) Developing an implementation plan to obtain state and local financial and regulatory commitments to implement measures developed under paragraph (a)(1);

(3) Determining the nature, extent and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(4) Determining those publicly owned treatment works which should be constructed, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction and implementing section 303(e) of the Act.

(b) In carrying out planning with grants made under paragraph (a), a State shall develop jointly with local, regional and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this section.

§ 35.2024 Combined sewer overflows.

(a) *Grant assistance from State allotment.* As provided in § 35.2015(b)(2)(iii), after September 30, 1984, upon request from a State, the Administrator may award a grant from the State allotment for correction of combined sewer overflows provided that the project is on the project priority list and it addresses impaired uses in priority water quality areas which are due to the impacts of the combined sewer overflows. The State must demonstrate to the Administrator that the water quality goals of the Act will not be achieved without the correction

of the combined overflows. The demonstration shall at a minimum prove that significant usage of the water for fishing and swimming will not be possible without the proposed project, and that the project will result in substantial restoration of an existing impaired use.

(b) *Separate fund for combined sewer overflows in marine waters.* (1) After September 30, 1982, the Administrator may award grants from funds appropriated under section 201(n)(2) of the Act for addressing impaired uses or public health risks in priority water quality areas in marine bays and estuaries due to the impacts of combined sewer overflows. The Administrator may award such grants provided that the water quality benefits of the proposed project have been demonstrated by the State. The demonstration shall at a minimum prove that significant usage of the water for shellfishing and swimming will not be possible without the proposed project for correction of combined sewer overflows, and the proposed project will result in substantial restoration of an existing impaired use.

(2) The Administrator shall establish priorities for projects with demonstrated water quality benefits based upon the following criteria:

- (i) National or regional significance;
- (ii) Extent of water quality benefits that would result;
- (iii) Relationship of water quality improvements to project costs.

§ 35.2025 Allowance and advance of allowance.

(a) *Allowance.* Step 2+3 and Step 3 grant agreements will include an allowance for facilities planning and design of the project to be determined in accordance with Appendix B of this subpart.

(b) *Advance of allowance to potential grant applicant.* (1) After application by the State (see § 35.2040(d)), the Regional Administrator will award a grant to the State in the amount of the reserve under § 35.2020(e) to advance allowances to potential grant applicants for facilities planning and project design.

(2) The State may request that the right to receive payments under the grant be assigned to specified potential grant applicants.

(3) The State may provide advances of allowance only to small communities, as defined by the State, which would otherwise be unable to complete an application for a grant under § 35.2040 in the judgment of the State.

(4) The advance shall not exceed the federal share of the estimate of the

allowance for such costs which a grantee would receive under paragraph (a) of this section.

(5) In the event a Step 2+3 or Step 3 grant is not awarded to a recipient of an advance, the State may seek repayment of the advance on such terms and conditions as it may determine. When a State recovers such advances they shall be added to its most recent grant for advances of allowance.

§ 35.2030 Facilities planning.

(a) *General.* (1) Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to comply with enforceable requirements of the Act. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology under § 35.2032, the selected alternative is cost-effective, i.e., is the most economical means of meeting the applicable Federal, State and local effluent and water quality or public health requirements over the useful life of the facility while recognizing environmental and other non-monetary considerations. For sewerage communities with a population of 10,000 or less, consideration must be given to at least one of the following: facultative ponds, trickling filters, or overland flow land treatment; and for unsewered communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(2) Grant assistance may be awarded before certification of the facilities plan if:

(i) The Regional Administrator determines that applicable statutory and regulatory requirements (including Part 6) have been met; that the facilities planning related to the project has been substantially completed; and that the project for which grant assistance is awarded will not be significantly affected by the completion of the facilities plan and will be a component part of the complete waste treatment system; and

(ii) The applicant agrees to complete the facilities plan on a schedule the State accepts and such schedule is inserted as a special condition of the grant agreement.

(b) *Facilities plan contents.* A completed facilities plan must include:

(1) A description of both the proposed treatment works, and the complete waste treatment system of which it is a part.

(2) A description of the Best Practicable Wastewater Treatment Technology (BPWTT). (See § 35.2005 (b)(6).)

(3) A cost effectiveness analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable Federal, State and local effluent, water quality and public health requirements. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation, maintenance and replacement costs. The current interest rate established by the Water Resources Council shall be used as the discount rate in the cost-effectiveness analysis. The population forecasting in the analysis shall be consistent with current State projections and with those used in the most recently completed Needs Survey. A cost-effectiveness analysis must include:

(i) An evaluation of alternative flow reduction methods. (If the grant applicant demonstrates that the existing average daily base flow (ADBDF) from the area is less than 70 gallons per capita per day (gpcd), or if the Regional Administrator determines the area has an effective existing flow reduction program, additional flow reduction evaluation is not required.)

(ii) A description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational;

(iii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to construction of new facilities;

(iv) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process.

(v) A consideration of systems with revenue generating applications;

(vi) An evaluation of opportunities to reduce use of, or recover energy;

(vii) Cost information on total capital costs, and annual operation, maintenance and replacement costs, as well as estimated annual or monthly costs to residential and industrial users.

(4) A demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system.

(5) An analysis of the potential open space and recreation opportunities associated with the project.

(6) An adequate evaluation of the environmental impacts of alternatives under Part 6 of this chapter.

(7) For the selected alternative, a concise description at an appropriate level of detail, of at least the following:

(i) Estimated capital construction and operation and maintenance costs, (identifying the Federal, State and local shares), and a description of the manner in which local costs will be financed;

(ii) Estimated cost of future expansion and long term needs for reconstruction of facilities following their useful life;

(iii) Cost impacts on wastewater system users; and

(iv) Institutional and management arrangements necessary for successful implementation.

(c) *Submission and review of facilities plan.* Each facilities plan must be submitted to the State agency for review. EPA recommends that potential grant applicants confer with State reviewers early in the facilities planning process. In addition, a potential grant applicant may request in writing from the State and EPA an early determination under Part 6 of this chapter of the appropriateness of a categorical exclusion, the scope of the environmental information document or the early preparation of an environmental impact statement.

§ 35.2032 Innovative and alternative technologies.

(a) *Funding for innovative and alternative technologies.* Projects or portions of projects using unit processes or techniques which the Regional Administrator determines to be innovative or alternative technology shall receive increased grants under § 35.2152.

(1) Only funds from the reserve in § 35.2020(c) shall be used to increase these grants.

(2) If the project is an alternative to conventional treatment works for a small community, funds from the reserve in § 35.2020(b) may be used for the 75 percent portion, or any lower Federal share of the grant as determined under § 35.2152.

(b) *Cost-effectiveness preference.* The Regional Administrator may award grant assistance for a treatment works or portion of a treatment works using innovative or alternative technologies if the total present worth cost of the treatment works for which the grant is to be made does not exceed the total present worth cost of the most cost-

effective conventional alternative by more than 15 percent.

(1) Privately-owned individual systems (§ 35.2034) are not eligible for this preference.

(2) Only the innovative or alternative portions of such works shall receive increased grants under § 35.2152.

(3) If the present worth costs of the conventional unit processes are more than 50 percent of the present worth cost of the treatment works, the cost-effectiveness preference applies only to the nonconventional components.

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the allowable costs of the modification or replacement of any project funded with increased grant funding in accordance with paragraph (a) of this section if he determines that:

(1) The innovative or alternative elements of the project have caused the project or significant elements of the complete waste treatment system of which the project is part to fail to meet project performance standards;

(2) The failure has significantly increased operation and maintenance expenditures for the project or the complete waste treatment system of which the project is part; or requires significant additional capital expenditures for corrective action;

(3) The failure has occurred prior to two years after initiation of operation of the project; and

(4) The failure is not attributable to negligence on the part of any person.

§ 35.2034 Privately owned individual systems.

(a) An eligible applicant may apply for a grant to build privately owned treatment works serving one or more principal residences or small commercial establishments.

(b) In addition to those applicable limitations set forth in § 35.2100 through § 35.2125 the grant applicant shall:

(1) Demonstrate that the total cost and environmental impact of building the individual system will be less than the cost of a conventional system;

(2) Certify that the principal residence or small commercial establishment was constructed before December 27, 1977, and inhabited or in use on or before that date;

(3) Apply on behalf of a number of individual units to be served in the facilities planning area;

(4) Certify that public ownership of such works is not feasible and list the reasons; and

(5) Certify that such treatment works will be properly operated and

maintained and will comply with all other requirements of section 204 of the Act.

§ 35.2040 Grant application.

Applicants for Step 2+3 or Step 3 assistance shall submit applications to the State agency. In addition to the information required in Part 30, Subpart B of this subchapter, applicants shall provide the following information:

(a) *Step 2+3: Combined design and building of a treatment works.* An application (EPA form 5700-32) for Step 2+3 grant assistance shall include:

(1) A facilities plan in accordance with § 35.2030 except as provided under § 35.2030(a)(2);

(2) Comments of appropriate clearinghouses in accordance with the Office of Management and Budget Circular A-95, as revised (see § 30.305 of this subchapter); and

(3) Certification from the State that there has been adequate public participation based on State and local statutes;

(4) Notification of any advance received under § 35.2025(b);

(5) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2125).

(b) *Step 3: Building of a treatment works.* An application (EPA form 5700-32) for Step 3 grant assistance shall include:

(1) A facilities plan prepared in accordance with § 35.2030, except as provided under § 35.2030(a)(2);

(2) Comments of appropriate clearinghouses in accordance with the Office of Management and Budget Circular A-95, as revised (see § 30.305 of this subchapter);

(3) Certification from the State that there has been adequate public participation based on State and local statutes;

(4) Notification of any advance received under § 35.2025(b);

(5) Evidence of compliance with all applicable limitations on award (§§ 35.2100 through 35.2125);

(6) Final design drawings and specifications;

(7) The project schedule; and

(8) In the case of an application for Step 3 assistance that includes the acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage systems, and an explanation of the intended method of acquiring the real property (see 40 CFR Part 4).

(c) *Training facility project.* An application for a grant for construction and support of a training facility,

facilities or training programs under section 109(a) of the Act shall include:

(1) A written commitment from the State agency to carry out at such facility a program of training;

(2) Comments of appropriate clearinghouses in accordance with the Office of Management and Budget Circular A-95, as revised (see § 30.305 of this subchapter); and

(3) If a facility is to be built, an engineering report including facility design data and cost estimates for design and building.

(d) *Grants to States for advance of allowances.* State applications for advance of allowances for small communities shall be on EPA form 5700-31, Application for Federal Assistance (short form).

§ 35.2042 Review of grant applications.

(a) All States shall review grant applications to ensure that they are complete. When the State determines the proposed project is entitled to priority it shall forward the State priority certification and, except where application review is delegated, the complete application to the Regional Administrator for review.

(b)(1) All States delegated authority to manage the construction grants program under section 205(g) of the Act and Subpart F of this part shall furnish a written certification to the Regional Administrator, on a project-by-project basis, stating that the applicable Federal requirements within the scope of authority delegated to the State under the delegation agreement have been met. The certification must be supported by documentation specified in the delegation agreement and will be made available to the Regional Administrator upon request. The Regional Administrator shall accept the certification unless he determines the State has failed to adequately establish grounds for the certification or that an applicable requirement has not been met.

(2) When EPA receives a certification covering all applicable Federal requirements, the Regional Administrator shall approve or disapprove the grant within 45 calendar days of receipt of the certification. The Regional Administrator shall state in writing the reasons for any disapproval, and he shall have an additional 45 days to review any subsequent revised submissions.

(c) Applications for assistance for training facilities funded under section 109(b) and for State advances of allowance under section 201(l)(1) of the

Act and § 35.2025 will be reviewed in accordance with 40 CFR 30 Subpart B.

§ 35.2050 Effect of approval or certification of documents.

Review or approval of facilities plans, design drawings and specifications or other documents by or for EPA is for administrative purposes only and does not relieve the grantee of its responsibility to properly plan, design, build and effectively operate, and maintain the treatment works described in the grant agreement as required under law, regulations, permits, and good management practices. EPA is not responsible for increased building costs resulting from defects in the plans, design drawings and specifications or other subagreement documents, except as provided in Appendix A.

§ 35.2100 Limitations on award.

Before awarding grant assistance for any project the Regional Administrator shall determine that the applicant and the applicant's project have met all of the applicable requirements of § 35.2040 and §§ 35.2100 through 35.2125.

§ 35.2101 Advanced treatment.

As required by the provisions in EPA appropriations legislation, projects proposing advanced treatment shall be awarded grant assistance only after the project has been reviewed under EPA's advanced treatment review policy. EPA recommends that potential grant applicants obtain this review prior to initiation of design.

§ 35.2102 Water quality management plans.

The project shall be consistent with the approved element of any applicable water quality management (WQM) plan approved under section 208 or section 303(e) of the Act; and the applicant shall be the wastewater management agency designated in any WQM plan certified by the Governor and approved by the Regional Administrator.

§ 35.2103 Priority determination.

The project shall be entitled to priority in accordance with § 35.2015, and the award of grant assistance for the project shall not jeopardize the funding of any treatment works of higher priority under the approved priority system.

§ 35.2104 Funding and other considerations.

The applicant shall:

- Agree to pay the non-Federal project costs;
- Demonstrate the legal, institutional, managerial, and financial capability to ensure adequate building

and operation, maintenance and replacement of the treatment works throughout the applicant's jurisdiction including the ability to comply with § 30.340-2 of this subchapter; and

(c) Certify that it has not violated any Federal, State or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice relating to or in connection with facilities planning or design work on a wastewater treatment works project.

§ 35.2105 Debarment and suspension.

The applicant shall indicate whether it used the services of any individual, organization, or unit of government for facilities planning or design work whose name appears on the master list of debarments, suspensions, and voluntary exclusions. See 40 CFR § 32.400. If the applicant indicates it has used the services of a debarred individual or firm EPA will closely examine the facilities plan, design drawings and specifications to determine whether to award a grant. EPA will also determine whether the applicant should be found non-responsible under § 30.340-2 of this subchapter or be the subject of possible debarment or suspension under Part 32 of this subchapter.

§ 35.2106 Plan of operation.

The applicant shall submit a draft plan of operation that addresses development of: an operation and maintenance manual; an emergency operating program; personnel training; an adequate budget identifying the basis for determining the annual operation and maintenance costs and the costs of personnel, material, energy and administration; operational reports; laboratory testing needs; and an operation and maintenance program for the complete waste treatment system.

§ 35.2107 Intermunicipal service agreements.

If the project will serve two or more municipalities, the applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. This requirement may be waived provided the applicant can demonstrate:

- That such an agreement is already in place; or
- Evidence of historic service relationships for water supply, wastewater or other services between the affected communities regardless of the existence of formal agreements; or
- That the financial strength of the supplier agency is adequate to continue

the project, even if one of the proposed customer agencies fails to participate.

§ 35.2108 Segmented treatments works.

Grant funding may be awarded for a phase or segment of a treatment works, subject to the limitations of § 35.2123, although that phase or segment does not result in compliance with the enforceable requirements of the Act, provided:

(a) The applicant agrees to complete the treatment works of which the phase or segment is a part according to a schedule specified in the grant agreement regardless of whether or not grant funding is available for the remaining phases or segments; and

(b) One or more of the following conditions exist:

(1) The Federal share of the cost of building the treatment works would require a disproportionate share of the State's annual allotment relative to other needs or would require a major portion of the State's annual allotment;

(2) The period to complete the building of the treatment works will cover three years or more; or

(3) The treatment works must be phased or segmented to meet the requirements of a Federal or State court order.

§ 35.2109 Step 2+3.

The Regional Administrator may award a Step 2+3 grant which will provide the Federal share of an allowance under Appendix B and the estimated allowable cost of building the project only if:

(a) The population of the applicant municipality is 25,000 or less according to the most recent U.S. Census;

(b) The total Step 3 building cost is estimated to be \$8 million or less; and

(c) The project is not for a treatment works phase or segment.

§ 35.2110 Access to individual systems.

Applicants for privately owned individual systems shall provide assurance of access to the systems at all reasonable times for such purposes as inspection, monitoring, building, operation, rehabilitation and replacement.

§ 35.2111 Revised water quality standards.

After December 29, 1984, no grant assistance can be awarded in a State which has failed to review and revise as appropriate its water quality standards or adopt new standards under section 303(c) of Act, unless the State has in good faith submitted such water quality standards and the Regional

Administrator has failed to act on them within 120 days of receipt.

§ 35.2112 Marine waiver discharge applicants.

If the applicant is also an applicant for a secondary treatment requirement waiver under section 301(h) of the Act, a plan must be submitted which contains a modified scope of work, a schedule for completion of the less-than-secondary facility and an estimate of costs providing for building the proposed less-than-secondary facilities, including provisions for possible future additions of treatment processes or techniques to meet secondary treatment requirements.

§ 35.2113 Environmental review.

(a) The environmental review required by Part 6 of this Chapter must be completed before submission of any application. The potential applicant should work with the State and EPA as early as possible in the facilities planning process to ascertain the appropriateness of a categorical exclusion, a finding of no significant impact, or an environmental impact statement.

(b) In conjunction with the facilities planning process as described in § 35.2030(c), a potential applicant may request, in writing, that EPA make a formal determination under Part 6 of this chapter.

§ 35.2114 Value engineering.

The applicant shall conduct value engineering if the total estimated cost of building the treatment works is more than \$10 million. The value engineering recommendations shall be implemented to the maximum extent feasible.

§ 35.2116 Collection system.

If the project involves collection system work, such work:

(a) Shall be for the replacement or major rehabilitation of an existing collection system which was not built with Federal funds awarded on or after October 18, 1972, and shall be necessary to the integrity and performance of the complete waste treatment system serving the municipality; or

(b) Shall be for a new cost-effective collection system in a municipality in existence on October 18, 1972, which has sufficient existing or planned capacity to adequately treat such collected wastewater and where the bulk (generally two-thirds) of the expected flow (flow from existing plus future residential users) will be from the resident population on October 18, 1972. The expected flow will be subject to the limitations for interceptors contained in § 35.2123. If assistance is awarded, the grantee shall provide assurances that

the existing population will connect to the collection system within a reasonable time after project completion.

§ 35.2118 Preaward costs.

(a) EPA will not award grant assistance for Step 2+3 and Step 3 work performed before award of grant assistance for that project, unless permitted under paragraph (b) of this section.

(b)(1) In emergencies or instances where delay could result in significant cost increases, the Regional Administrator may approve preliminary Step 3 work (such as procurement of major equipment requiring long lead times, field testing of innovative and alternative technologies, minor sewer rehabilitation, acquisition of eligible land or of an option for the purchase of eligible land, or advance building of minor portions of treatment works), after completion of the environmental review a required by § 35.2113.

(2) If the Regional Administrator approves preliminary Step 3 work, such approval is not an actual or implied commitment of grant assistance and the applicant proceeds at its own risk. Any procurement is subject to the requirements of 40 CFR Part 33.

§ 35.2120 Infiltration/inflow.

(a) The applicant shall demonstrate to the Regional Administrator's satisfaction that each sewer system discharging into the proposed treatment works project is not or will not be subject to excessive infiltration/inflow.

(b) If flow rates exceed 120 gallons per capita per day during high ground water period or 2.5 times the average design flow during a rain storm the applicant may select either to:

(1) Request the Regional Administrator to determine that he may proceed without further flow analysis, in which case the Federal share of the project cost will be limited to that portion of the project having a capacity of up to 120 gallons per capita per day; or

(2) Perform a study of the sewer system to determine the quantity of excessive infiltration/inflow and to propose a sewer rehabilitation program to eliminate the portion of infiltration and inflow that is excessive, in which case Step 3 work, such as the cost for sewer rehabilitation based on the elimination of infiltration and inflow, is eligible for grant assistance and the eligible treatment plant size will be based on the quantity of infiltration and inflow determined by the sewer system study to be non-excessive.

§ 35.2122 Approval of user charge system and proposed sewer use ordinance.

If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the applicant must obtain the Regional Administrator's approval of its user charge system (§ 35.2140) and proposed (or existing) sewer use ordinance (§ 35.2130). If the applicant has a sewer use ordinance or user charge system in effect, the applicant shall demonstrate to the Regional Administrator's satisfaction that they are adequate and being enforced.

§ 35.2123 Reserve capacity.

EPA will limit grant assistance for reserve capacity as follows:

(a) An interceptor that received a Step 3 grant on a segment before December 29, 1981, may receive grants for the remaining interceptor segments included in the facilities plan for reserve capacity as planned, up to 40 years.

(b) A primary, secondary or advanced treatment facility, or its interceptors included in the facilities plan may receive a Step 3 grant with 20 years' reserve capacity if the grant is received after December 28, 1981, but before October 1, 1984.

(c) Except as provided in paragraph (a) of this section, a primary, secondary, or advanced treatment facility or its interceptors included in the facilities plan, that received a Step 3 grant on a segment before October 1, 1984, may receive grants with 20 years' reserve capacity for the remaining segments.

(d) Except as provided in paragraph (c) of this section, after September 30, 1984, no grant shall be made to provide reserve capacity for a project for secondary treatment or more stringent treatment or new interceptors and appurtenances. Grants for such projects shall be based on capacity necessary to serve existing needs (including existing needs of residential, commercial, industrial, and other users) as determined on the date of the approval of the Step 3 grant, but in no case greater than existing needs on October 1, 1990;

(e) All incremental costs for any reserve capacity in excess of that provided by this section shall be paid solely by the applicant. Incremental costs includes all costs which would not have been incurred but for the additional excess capacity, i.e., any cost in addition to the most cost-effective alternative with eligible reserve capacity described under paragraphs (a) through (c) of this section.

§ 35.2125 Transport and treatment of compatible industrial wastewater.

(a) Grant assistance shall be provided for treatment works capacity to transport or treat compatible industrial wastewater, only if the treatment works (including each collector, interceptor, pumping station, plant component, and other system component) would be eligible for grant assistance in the absence of the industrial capacity. No grant assistance shall be provided to convert non-compatible industrial wastewater to compatible industrial wastewater, or otherwise to transport or treat non-compatible industrial wastewater.

(b) Grant assistance shall not be provided for costs allocable to the transport or treatment of wastewater produced by a facility that is owned and operated by the Federal Government and contributes in excess of 250,000 gallons per day or five percent of the design flow of the complete waste treatment system, whichever is less.

§ 35.2130 Sewer use ordinance.

The sewer use ordinance (see also §§ 35.2122 and 35.2208) or other legally binding document shall prohibit any new connections from inflow sources into the treatment works and require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works does not contain toxics or other pollutants in amount or concentration that endanger public safety and physical integrity of the treatment works; or cause violation of effluent or water quality limitations; or preclude the selection of the most cost-effective alternative for wastewater treatment and sludge disposal.

§ 35.2140 User charge system.

The user charge system (see §§ 35.2122 and 35.2208) must be designed to produce adequate revenues required for the operation, maintenance, and replacement of the system. It shall provide that each user which discharges pollutants to the system that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay for such increased cost. The user charge system shall be based on either actual use under paragraph (a) of this section or ad valorem taxes under paragraph (b) of this section.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or estimated use) of wastewater treatment services shall provide that each user (or user class) pays its proportionate share

of operation and maintenance (including replacement) costs of treatment works within the grantee's service area, based on the user's proportionate contribution to the total wastewater loading from all users (or user classes).

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system which is based on ad valorem taxes may be approved if:

(1) On December 27, 1977, the grantee had in existence a system of dedicated ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee has continued to use that system;

(2) The ad valorem user charge system distributes the operation and maintenance (including replacement) costs for all treatment works in the grantee's jurisdiction to the residential and small nonresidential user class (including nonresidential commercial and industrial users that introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works), in proportion to the use of the treatment works by this class; and

(3) Each member of the industrial user and commercial user class which discharges more than 25,000 gallons per day of sanitary waste pays its share of the costs of operation and maintenance (including replacement) of the treatment works based upon charges for actual use.

(c) *Notification.* Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill (or other means acceptable to the Regional Administrator), of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(d) *Financial management system.* Each user charge system must include an adequate financial management system that will accurately account for revenues generated by the system and expenditures for operation and maintenance (including replacement) of the treatment system.

(e) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users based upon either of the following:

(1) In the same manner that it distributes the costs for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;
(ii) Land area of the users;
(iii) Number of hookups or discharges of the users;

(iv) Property valuation of the users, if the grantee has an approved user charge system based on ad valorem taxes.

(f) *Adoption of system.* One or more municipal legislative enactments or other appropriate authority must incorporate the user charge system. If the project is a treatment system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall adopt user charge systems in accordance with section 204(b)(1)(A) of the Act and this section. These user charge systems shall also be incorporated in appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing wastes to the treatment works.

(g) *Inconsistent agreements.* The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of section 204 (b)(1)(A) of the Act and this section.

§ 35.2152 Federal share.

(a) *General.* The Federal share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement under Appendix B. Except as provided elsewhere in this section, the Federal share shall be:

(1) 75 percent for grant assistance awarded before October 1, 1984;

(2) 55 percent for grant assistance awarded after September 30, 1984, except as provided in paragraph (a)(3) of this section; and

(3) 75 percent for grant assistance awarded after September 30, 1984, for sequential phases or segments of a primary, secondary, or advanced treatment facility or its interceptors, or infiltration/inflow correction provided:

(i) The treatment works being phased or segmented is described in the facilities plan; and

(ii) The Step 3 grant for the initial phase or segment is awarded prior to October 1, 1984.

(b) *Innovative and alternative technology.* In accordance with § 35.2032, the amount of any grant assistance shall be 20 percent greater than the Federal share under paragraph (a) or (c) of this section, but in no event shall the total Federal share be greater

than 85 percent for eligible treatment works or unit processes and techniques that the Regional Administrator determines meet the definition of innovative or alternative technology. These grants depend on the availability of funds from the reserve under § 35.2020. The proportional State contribution to the non-Federal share of building costs for I/A projects must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible building costs for all treatment works which receive 75 or 55 percent grants or such other Federal share under paragraph (c) of this section in the State.

(c) *Uniform lower Federal share.* (1) Except as provided in § 35.2032(c) and paragraph (d) of this section, the Governor of a State may request the Regional Administrator's approval to revise uniformly throughout the State the Federal share of grant assistance for all future projects. The uniform lower Federal share must apply to all needs categories (see § 35.2015(b)(2)).

(2) After EPA awards grant assistance for a project, the Federal share shall be the same for any grant increase for that project.

(d) *Training facilities.* The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallocation available to a State under § 35.2010 for payment of 100 percent of the cost of treatment works required to train and upgrade waste treatment works operations and maintenance personnel and for the costs of other operator training programs.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds awarded to any State under section 109(b) for all training facilities or programs shall not exceed \$500,000.

(2) Any grantee who received a grant under section 109(b) before December 27, 1977, may have the grant increased up to \$500,000 by funds made available under the Act, not to exceed 100 percent of the allowable costs.

§ 35.2200 Grant conditions.

In addition to the EPA General Grant Conditions (Part 30 of this subchapter), each treatment works grant shall be subject to the conditions under §§ 35.2202 through 35.2214.

§ 35.2202 Step 2+3 projects.

Prior to initiating procurement action for the building of the project, a Step 2+3 grantee shall submit to the Regional Administrator for approval the

information required under §§ 35.2040(b)(4) through (b)(6), 35.2107 and 35.2140.

§ 35.2204 Project changes.

(a) Minor changes in the project work that are consistent with the objectives of the project and within the scope of the grant agreement do not require the execution of a formal grant amendment before the grantee's implementation of the change. However, if such changes increase the costs of the project, the amount of the funding provided by the grant agreement may only be increased by a formal grant amendment.

(b) In addition to the requirements of Part 30 of this subchapter, the grantee must receive from the Regional Administrator a formal grant amendment before implementing changes which:

- (1) Alter the project performance standards;
- (2) Alter the type of wastewater treatment provided by the project;
- (3) Delay or accelerate the project schedule; or
- (4) Substantially alter the facilities plan, design drawings and specifications, or the location, size, capacity, or quality of any major part of the project.

§ 35.2206 Operation and maintenance.

(a) The grantee must make provision satisfactory to the Regional Administrator for assuring economical and effective operation and maintenance (including replacement) of the treatment works in accordance with a plan of operation approved by the State or as appropriate, the interstate agency.

(b) Except as provided in paragraphs (c)(1) and (2) of this section, the Regional Administrator shall not pay more than 50 percent of the Federal share of any project unless the grantee has furnished a satisfactory final plan of operation, and shall not pay more than 90 percent of the Federal share of any project unless the grantee has furnished a satisfactory operation and maintenance manual.

(c)(1) In projects where segmenting of a treatment works has occurred, the Regional Administrator shall not pay more than 90 percent of the Federal share of the total allowable costs of the treatment works until the grantee has furnished a satisfactory operation and maintenance manual.

(2) In projects where a component is placed in operation before completion of the entire project, the Regional Administrator shall not make any additional payment on that project until a final operation and maintenance

manual for the operating component is furnished.

§ 35.2208 Adoption of sewer use ordinance and user charge system.

The grantee shall adopt its sewer use ordinance and implement its user charge system developed under §§ 35.2130 and 35.2140 before the treatment works is placed in operation. Further, the grantee shall implement the user charge system and sewer use ordinance for the useful life of the treatment works.

§ 35.2210 Land acquisition cost approval.

The grantee shall not make any offer to acquire real property determined allowable for grant assistance under Appendix A, until the Regional Administrator approves the price the grantee will offer the property owner (see 40 CFR Part 4).

§ 35.2212 Project initiation and completion.

(a) The grantee shall expeditiously initiate and complete the project, in accordance with the project schedule contained in the grant application and agreement. Failure to promptly initiate and complete a project may result in annulment or termination of the grant.

(b) The grantee shall initiate procurement action for building the project promptly after award of a Step 3 grant or after the Regional Administrator has approved the information required under §§ 35.2040(b)(4) and (b)(5), 35.2107, 35.2140, under a Step 2+3 grant. Public notice of proposed procurement action should be made promptly after Step 3 award or final approvals for a Step 2+3 grant under § 35.2202. The Regional Administrator shall annul or terminate the grant if the grantee has not awarded the subagreements and issued a notice to proceed, where one is required, for building all significant elements of the project within nine months of the Step 3 award or final Step 2+3 approvals. However, the Regional Administrator may defer (in writing) the annulment or termination for not more than three additional months if there is good cause for delay.

(c) The grantee shall notify the Regional Administrator immediately upon award of the subagreement for building all significant elements of the project.

§ 35.2214 Grantee responsibility for project performance.

(a) The grantee shall complete the project in accordance with the grant agreement including: the facilities plan that establishes the need for the project; the design drawings and specifications;

the plan of operation under § 35.2106 that identifies the basis to determine annual operating costs; the financial management system under § 35.2140(d) that adequately accounts for revenues and expenditures; the user charge system under § 35.2140 that will generate sufficient revenue to operate and maintain the treatment works; the project schedule; and all applicable regulations. The grantee shall maintain and operate the project to meet project performance standards including the enforceable requirements of the Act for the useful life for which the project is designed. Nothing in this section affects EPA's right to take remedial action against a grantee that fails to carry out these obligations.

(b) The grantee shall provide the architectural and engineering services and other services necessary to fulfill the obligation in paragraph (a) of this section.

(c) Subject to the provisions of 40 CFR Part 33. The grantee shall select the engineer or engineering firm principally responsible for either supervising construction or providing architectural and engineering services during construction as the prime engineer to provide the following services during the first year following the initiation of operation:

(1) Direct the operation of the project and revise the operation and maintenance manual for the project as necessary to accommodate actual operating experience;

(2) Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and

(3) Advise the grantee whether the project is capable of meeting the project performance standards.

(d) On the date one year after the initiation of operation of the project the grantee shall certify to the Regional Administrator whether the project is capable of meeting the project performance standards. If the project does not meet the project performance standards the grantee shall submit the following:

(1) A corrective action report which includes an analysis of the cause of the project's inability to meet the performance standards including infiltration/inflow reduction, and estimates of the nature, scope and cost of the corrective action necessary to bring the project into compliance.

(2) The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and

(3) The scheduled date for certifying to the Regional Administrator that the

project is capable of meeting the project performance standards.

(e) Except as provided in § 35.2032(c) corrective action necessary to bring a project into compliance with the project performance standards shall be undertaken by the grantee at other than Federal expense.

(f) Nothing in this section shall be construed to prohibit a grantee from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work.

§ 35.2216 Notice of building completion and final inspection.

The grantee shall notify the Regional Administrator when the building of the project is complete. Final inspection shall be made by the Regional Administrator within 60 days of the receipt of the notice of building completion.

§ 35.2250 Determination of allowable costs.

The Regional Administrator will determine the allowable costs of the project based on applicable provisions of laws and regulations, the scope of the approved project, § 30.705 of this subchapter, and Appendix A of this subpart.

§ 35.2260 Advance purchase of eligible land.

In the case of grant assistance awarded solely for the acquisition of eligible land, the following provisions are deferred until the award of the ensuing Step 3 assistance for the building of facilities: §§ 35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2262 Funding of field testing.

In the case of grant assistance for field testing, the following provisions are deferred until the results of the field testing are used to complete the requirements of § 35.2040 and the award of assistance for building the approved facilities: §§ 35.2105, 35.2130, 35.2140, 35.2206 and 35.2208.

§ 35.2300 Grant payments.

The Regional Administrator shall pay the Federal share of the allowance under § 35.2025 and the allowable project costs incurred to date and currently due and payable by the grantee, as certified in the grantee's most recent payment request.

(a) *Adjustment.* In addition to adjustments as a result of final settlement under § 30.815 of this subchapter, the Regional Administrator may review or audit requests for payment. Based on such review or audit,

any payment request may be revised as appropriate.

(b) *Refunds, rebates and credits.* The Federal share of any refunds, rebates, credits, or other amounts (including any interest) that accrue to or are received by the grantee for the project, and that are properly allocable to costs for which the grantee has been paid under a grant, must be credited to the current State allotment or paid to the United States. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the grantee securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Regional Administrator.

(c) *Release.* By its acceptance of final payment, the grantee releases and discharges the United States, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Regional Administrator and the grantee.

(d) *Payment of costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.* Notwithstanding the provisions of paragraph (a) of this section, if the Regional Administrator determines it is necessary for the expeditious completion of a project, he may make advance payment after grant award for the Federal share of the eligible cost of any payment of relocation assistance under § 4.502(c) of this chapter by the grantee. The requirements in Part 30 of this subchapter apply to any advances of funds for assistance payments.

§ 35.2350 Subagreement enforcement.

(a) *Regional Administrator authority.* At the grantee's request the Regional Administrator may provide technical and legal assistance in the administration and enforcement of any subagreement related to treatment works for which an EPA grant was made and to intervene in any civil action involving the enforcement of such subagreements, including subagreement disputes which are the subject of either arbitration or court action.

(c) *Privity of contract.* The Regional Administrator's technical or legal involvement in any subagreement dispute will not make EPA a party to any subagreement entered into by the grantee.

Appendix A—Determination of Allowable Costs

(a) *Purpose.* The information in this Appendix represents Agency policies and

procedures for determining the allowability of project costs based on the Clean Water Act, EPA policy, appropriate Federal cost principles under § 30.710 of this subchapter and reasonableness. This appendix supplements the requirements contained in § 30.705 of this subchapter.

(b) *Applicability.* This cost information applies to grant assistance awarded on or after the effective date of this regulation. Project cost determinations under this subpart are not limited to the items listed in this appendix. Additional cost determinations based on applicable law and regulations, must of course, be made on a project-by-project basis.

Costs Related to Subagreements

1. Allowable costs related to subagreements include:

- The costs of subagreements for building the project;
- The costs of complying with the procurement requirements of Part 33 of this subchapter other than the costs of self-certification under § 33.110;
- The costs for establishing or using minority and women's business liaison services;
- The costs of services incurred during the building of a project to ensure that it is built in conformance with the design drawings and specifications;
- The costs (including legal, technical, and administrative costs) of assessing and defending against a contractor claim for increased costs under a subagreement provided:

(1) The claim arises from work within the scope of the grant;

(2) A formal grant amendment is executed specifically covering the costs before they are incurred; and

(3) The costs are not incurred to:

- Prepare documentation that should be prepared by the contractor to support his claim; or

- Defend against claims that should be settled reasonably without arbitration or litigation;

f. Change orders and the costs of meritorious contractor claims for increased costs under subagreements as follows:

(1) Change orders and the costs of meritorious contractor claims provided the costs are:

- Within the scope of the project;
 - Not caused by the grantee's mismanagement; and
 - Not caused by the grantee's vicarious liability for the improper actions of others;
- (2) Provided the requirements of paragraph f(1) are met, the following are examples of allowable change order and contractor claim costs:

(i) Building costs resulting from defects in the plans, design drawings and specifications, or other subagreement documents only to the extent that the costs would have been incurred if the subagreement documents on which the bids were based had been free of the defects, and excluding the costs of any rework, delay, acceleration, or disruption caused by such defects;

(ii) Costs of equitable adjustments under Clause 4, Differing Site Conditions, of the

model subagreement clauses required under § 33.1030 of this Subchapter;

(3) Settlements, arbitration awards, and court judgments which resolve contractor claims shall be reviewed by the grant award official and shall be allowable only to the extent that they meet the requirements of paragraph f(1), are reasonable, and do not attempt to pass on to EPA the cost of events that were the responsibility of the grantee, the contractor, or others.

g. The costs of the services of the prime engineer required by § 35.2214 during the first year following initiation of operation of the project.

2. Unallowable costs related to subagreements include:

- The costs of architectural or engineering services incurred in preparing a facilities plan and the design drawings and specifications for a project;
- Except as provided in 1.f. above, architectural or engineering services necessary to correct defects in a facilities plan, design drawings and specifications, or other subagreement documents; and
- Bonus payments, not legally required, for completion of building before a contractual completion date.

Mitigation

1. Allowable costs include:

a. Costs necessary to mitigate only direct, adverse, physical impacts resulting from building of the treatment works.

b. The costs of site screening necessary to comply with NEPA related studies and facilities plans, or necessary to screen adjacent properties.

c. The cost of groundwater monitoring facilities necessary to determine the possibility of groundwater deterioration, depletion or modification resulting from building the project.

Privately or Publicly Owned Small and On-Site Systems

1. Allowable costs for small and on-site systems serving residences and small commercial establishments inhabited on or before December 27, 1977 include:

a. The cost of major rehabilitation, upgrading, enlarging and installing small and on-site systems serving principal residences;

b. Conveyance pipes from property line to off-site treatment unit which serves a cluster of buildings;

c. Treatment and treatment residue disposal portions of toilets with composting tanks, oil flush mechanisms, or similar in-house devices;

d. Treatment or pumping units from the incoming flange when located on private property and conveyance pipes, if any, to the collector sewer.

2. Unallowable costs for small and on-site systems include:

a. Modification to physical structure of homes or commercial establishments;

b. Conveyance pipes from the house to the treatment unit located on user's property;

c. Wastewater generating fixtures such as commodes, sinks, tubs, and drains.

Real Property

1. Allowable costs for land and rights-of-way include:

a. The cost (including associated legal, administrative and engineering costs) of land acquired or by lease or easement under grants awarded after October 17, 1972, that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment provided the Regional Administrator approves it in the grant agreement, including:

(1) The cost of a reasonable amount of land considering irregularities in application patterns, and the need for buffer areas, berms, and dikes;

(2) The cost of land for sludge disposal with application at the maximum rate possible (generally five dry tons per acres per year or more);

(3) The cost of land acquired for soil absorption system for a group of two or more homes;

(4) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment;

(5) The cost of land acquired for storage of treated wastewater in land treatment systems before-land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise the allowable cost will be determined by the ratio of the storage volume to the total volume of the pond.

b. The cost of complying with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 et seq., 4651 et seq.), under Part 4 of this chapter;

c. The cost of contracting with another public agency or qualified private contractor for part or all of the required acquisition and/or relocation services.

d. The cost associated with the preparation of the treatment works site before, during and, to the extent agreed on in the grant agreement, after building. These costs include:

(1) The cost of demolition of existing structures on the treatment works site (including rights-of-way) if building cannot be undertaken without such demolition;

(2) The cost (considering such factors as betterment, cost of contracting and useful life) of removal, relocation or replacement of utilities, provided the grantee is legally obligated to pay under state or local law;

(3) The cost of restoring streets, rights-of-way and individual system building sites to their original condition. The need for such restoration must result directly from the construction and is generally limited to repaving the width of trench;

e. The cost of acquiring all or part of an existing publicly or privately owned wastewater treatment works provided all the following criteria are met:

(1) The acquisition provides new pollution control benefits;

(2) The facility was not built with previous Federal or State financial assistance;

(3) The primary purpose of the acquisition is not the reduction, elimination, or redistribution of public or private debt; and

(4) The acquisition is not being used as a means to circumvent the requirements of the Act, these regulations, or other Federal, State or local requirements.

2. Unallowable costs for land and rights-of-way include:

a. The costs of acquisition (including associated legal, administrative and engineering etc.) of sewer rights-of-way, waste treatment plant sites (including small system sites), sanitary landfill sites and sludge disposal areas except as provided in paragraph 1.a. of this section.

b. Removal, relocation or replacement of utilities located on land by privilege, such as franchise.

Equipment, Materials and Supplies

1. Allowable costs of equipment, materials and supplies include:

a. The cost of a reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations and laboratory items necessary to conduct tests required for plant operation;

b. The costs for purchase and/or transportation of biological seeding materials required for expeditiously initiating the treatment process operation;

c. Cost of shop equipment installed at the treatment works necessary to the operation of the works;

d. The costs of necessary safety equipment, provided the equipment meets applicable Federal, State, local or industry safety requirements;

e. A portion of the costs of collection system maintenance equipment. The cost of the equipment shall be based on: (1) the portion of the total collection system paid for by the grant, (2) a demonstrable frequency of need, and (3) the need for the equipment to preclude the discharge or bypassing of raw sewage.

f. The cost of mobile equipment necessary for the operation of the overall wastewater treatment facility, transmission of wastewater or sludge, or for the maintenance of equipment; these items include:

(1) Portable stand-by generators;

(2) Large portable emergency pumps to provide "pump-around" capability in the event of pump station failure or pipeline breaks; and

(3) Sludge or septage tanks, trailers, and other vehicles having as their sole purpose the transportation of liquid or dewatered wastes from the collector point (including individual or on-site systems) to the treatment facility or disposal site;

2. Unallowable costs of equipment, materials and supplies include:

a. The costs of equipment or material procured in violation of the procurement requirements of 40 CFR Part 33.

b. The cost of furnishings including draperies, furniture and office equipment;

c. The cost of ordinary site and building maintenance equipment such as lawnmowers and snowblowers.

d. The cost of vehicles for the transportation of the grantee's employees.

e. The cost of process equipment such as trickling filters and comminators that use mercury seals.

Industrial and Federal Users

1. Allowable costs for industrial and Federal facilities include development of a municipal pretreatment program approvable under Part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.

2. Unallowable costs for industrial and Federal facilities include:

a. The cost of developing an approvable municipal pretreatment program when performed solely for the purpose of seeking an allowance for removal of pollutants under Part 403 of this chapter;

b. The cost of monitoring equipment used by industry for sampling and analysis of industrial discharges to municipal treatment works;

c. All incremental costs for sludge management incurred as a result of the grantees providing removal credits to industrial users under 40 CFR 403.7 beyond those sludge management costs that would otherwise be incurred in the absence of such removal credits.

Miscellaneous Costs

1. Allowable costs include:

a. The costs of salaries, benefits and expendable materials the grantee incurs for the project;

b. Unless otherwise specified in this regulation, the costs of meeting specific Federal statutory requirements;

c. Costs for necessary travel directly related to accomplishment of project objectives. Travel not directly related to a specific project, such as travel to professional meetings, symposia, technology transfer seminars, lectures, etc., may be recovered only under an indirect cost agreement;

d. Cost of royalties for the use of or rights in a patented process or product with the prior approval of the Regional Administrator;

e. Costs allocable to the water pollution control purpose of multiple purpose projects as determined by applying the Alternative Justifiable Expenditure (AJE) method described in CG82. Multiple purpose projects that combine wastewater treatment with recreation do not need to use the AJE method, but can be funded at the level of the most cost-effective single-purpose alternative;

f. The costs of preparing a corrective action report required by § 35.2214(d) provided a formal grant amendment is executed specifically covering the costs before they are incurred;

g. Costs of grantee employees attending training workshops/seminars that are necessary to provide instruction in administrative, fiscal or contracting procedures required to complete the construction of the treatment works, if approved in advance by the Regional Administrator;

2. Unallowable costs include:

a. Ordinary operating expenses of the grantee including salaries and expenses of elected and appointed officials and preparation of routine financial reports and studies;

b. Preparation of applications and permits required by Federal, State or local regulations or procedures;

c. Administrative, engineering and legal activities associated with the establishment of special departments, agencies, commissions, regions, districts or other units of government;

d. Approval, preparation, issuance and sale of bonds or other forms of indebtedness required to finance the project and the interest on them;

e. Except as provided in § 35.2025(c) the cost of replacing, through reconstruction or substitution, treatment works: (1) that were built with Federal assistance awarded under the Federal Water Pollution Control Act as amended; or (2) that fail prior to initiation of operation or fail to meet project performance standards. A treatment works that fails at the end of its design life is not covered by this provision;

f. Personal injury compensation or damages arising out of the project;

g. Fines and penalties due to violations of, or failure to comply with, Federal, State or local laws, regulations or procedures;

h. Costs outside the scope of the approved project;

i. Costs for which grant payment has been or will be received from another Federal agency unless specifically authorized by statute;

j. Costs of treatment works for control of pollutant discharges from a separate storm sewer system; and

k. The cost of treatment works that would provide capacity for new habitation or other establishments to be located on environmentally sensitive land such as wetlands or floodplains.

[FR Doc. 82-12858 Filed 5-11-82; 8:45 am]

BILLING CODE 5560-50-M

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 35****[WH-FRL 2073-6(b)]****Grants for Construction of Treatments
Works; Proposed Amendments****AGENCY:** Environmental Protection
Agency.**ACTION:** Proposed rule with request for
comments.

SUMMARY: This document contains the procedures to determine an allowance for facilities planning or design activities. Formerly Step 1 and 2 grants were awarded for these activities. The Municipal Wastewater Treatment Construction Grant Amendments of 1981 abolished grants for planning and design and required the development of allowances.

DATE: Comments on the proposed regulation must be received on or before June 11, 1982.

ADDRESSES: Comments should be addressed to: Central Docket Section (A-130), Attention: Docket No. C-81-5, Environmental Protection Agency, Washington, D.C. 20426.

The public may inspect the comments received on this proposed rule at: Central Docket Section, Gallery 1 West Tower Lobby, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., between 8 a.m. and 4:30 p.m. business days.

FOR FURTHER INFORMATION CONTACT: Jane Magee, Office of Water Program Operations (WH-546), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-8253.

SUPPLEMENTARY INFORMATION: One of the most significant changes in the construction grants program resulting from the 1981 Amendments is the elimination of grants for planning (Step 1) and design (Step 2). In the future, an allowance will be provided to grantees for necessary facilities planning and design. Grantees that currently have a Step 1 or Step 2 grant will be able to complete the work included in their original scope of work using the present system of grant payments. However, the 1981 Amendments prohibit making new grants exclusively for facilities planning or design. Those activities will be completed by potential grantees before they apply for a grant to build their projects. Future grants will include an allowance for facilities planning and design. The Congress, in enacting this mechanism, sought to achieve system-wide efficiency. In so doing, the Congress acknowledged and choose to

tolerate the minor inequity likely in any given project. The device in the law is not a cost reimbursement, but an allowance.

EPA understands that, in practice, any savings realized from the allowance will be available to each community for general public purposes. The Agency expects that these funds will be used to defray unreimbursed expenses associated with plan construction. Due to the unrestricted nature of the allowance, however, EPA will not audit the use of these funds.

The allowances shown in Appendix B are based on the proposed percentage of building costs that have historically been attributable to facilities planning and design. The allowances incorporate all activities that have been included in Step 1 and Step 2 grants, but costs for individual activities are not segregated and cannot be considered as a basis for reimbursement in addition to the allowance. The allowance for a project is a single sum based on the actual total allowable building cost. Allowances are not auditable and the activities they cover are not subject to EPA requirements for procurement under assistance agreements (40 CFR Part 33). This proposed rule shall be used to estimate allowances and advances pending promulgation of a final rule, which may require adjustments.

The allowance applies to all of the work performed during the facilities planning and design of the project, and not just architectural or engineering services. Accordingly, the historical data used to develop the allowances included all the allowable cost of the Step 1 and Step 2 work.

The data analysis for development of the allowances took the form of using one parameter as the sole predictor of a second parameter. The method employed was bivariate analysis using a linear regression technique, a convenient, widely accepted way of analyzing both large and small data sets for relationships. The least-squares method was used for the linear regression analysis. This method yields an equation which expresses one variable in terms of another. The allowances for planning and design are based on such a regression equation. The allowance for design, however, was developed by subtracting the regression equation for facilities planning from the regression equation for combined facilities planning and design. This mathematical procedure was necessary because many of the early Step 2 projects that were included in the historical analyses contained reimbursements for facilities planning costs in Step 2 awards.

There are many variables other than building cost that influence facilities planning and design cost (e.g., level of effort, scope and complexity of the project, State and local requirements). For this reason the actual fee for planning and design has historically been negotiated for each project. Accordingly it is not surprising that our analysis shows that building cost is not a good predictor of facility planning and design cost for any one specific project. Rather, the allowance tables represent the best fit relationship of widely scattered historical data.

EPA decided to establish an allowance based on the variance of facilities planning and design cost (expressed as a percentage of building cost) with building cost for the following reasons:

1. The 1981 Amendments require an allowance expressed as percentage of cost based on historical experience.

2. Lease-square curve fitting. The allowance tables do, in fact, represent the best bivariate relationship for the historical data that was analyzed.

3. Consistency with construction program experience. It has been the experience of other governmental and private organizations that smaller projects generate higher facilities planning and design cost, as a percentage of cost, than larger projects.

4. The EPA approach provides municipalities with a reasonable and equitable allowance for planning and design.

Note.—The EPA allowance does not reimburse for costs incurred. Application of the EPA allowance as a contract price is a misuse of the data.

This program is listed in the Catalog of Federal Domestic Assistance as number 66.418—Construction Grants for Wastewater Treatment Works. Applicants must comply with all applicable requirements of the Office of Management and Budget (OMB) Circular A-95.

Regulation Development Process

Under Executive Order 12291 EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We are proposing this regulation to implement the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117). I have determined this regulation is not a major regulation, and thus is not subject to the impact analysis requirements of Executive Order 12291.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The reporting or recordkeeping (information) provisions in this rule will be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* Any final rule will explain how its reporting or recordkeeping provisions respond to any OMB or public comments.

List of Subject in 40 CFR Part 35

Air pollution control, grant programs—environmental protection, Indians, Pesticides and Pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 4, 1982.

John W. Hernandez, Jr.,
Acting Administrator.

For the reasons outlined in the preamble, a new Appendix B to Part 35 of Title 40, Code of Federal Regulations, is proposed as set forth below.

40 CFR Part 35 Subpart I is proposed to be amended by adding Appendix B to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart I—Grants for Construction of Treatment Works

Appendix B—Allowance for Facilities Planning and Design

1. This Appendix provides the method by which EPA will determine both the estimated and the final allowance under § 35.2025 for facilities planning and design. The Step 2+3 and Step 3 grant agreement will include an estimate of the Federal share of the allowance. The final allowance will be contained in a formal grant amendment executed after the initial award of all the prime subagreements for building the project.

2. The Federal share of the allowance is determined by applying the applicable grant percentage to the allowance.

3. The allowance is not intended to reimburse the grantee for costs actually incurred for facilities planning or design. Rather, the allowance is intended to assist in defraying those costs. Under this procedure, questions of equity (i.e., reimbursement on a dollar-for-dollar basis) will not be appropriate.

4. The estimated and final allowance will be determined in accordance with this Appendix and Tables 1 and 2. Tables 1 and 2 are based on an analysis of the historical

data for the cost of facilities planning and design in the construction grants program.

5. The allowance as a percentage of the building cost is obtained from Table 1. Table 2 is to be used in the event that the grantee received a grant for facilities planning. The amount of the allowance is computed by applying the resulting allowance percentage to the building cost.

6. The estimated allowance is to be based on an estimate of the allowable building cost. The building cost and final allowance is to be based on the allowable cost of the initial award of all subagreements for building the project.

7. The final allowance will be determined one time only, based on allowable building cost, and will not be adjusted for subsequent cost increases or decreases.

8. For a Step 3 project, the Federal share of the final allowance will be included in the first payment following the grantee's award of all prime subagreements for building the project upon which the allowance is based.

9. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawing, reviewing change orders, making periodic visits to job site, etc. Architect or engineering services during the building of the project will be paid on a cost reimbursement basis subject to these regulations and 40 CFR Part 33.

10. If the grantee awards a subagreement for building the project more than one year after substantial completion of the design drawings and specifications, the allowance will be based on the total allowable building cost adjusted to reflect the building cost one year after substantial completion of design drawings and specifications. This adjustment will be made by applying the construction cost index in the Engineering News Record to the allowable cost of the initial award of the subagreements for building the project.

11. The allowance for segmented waste treatment systems will be based on the total allowable building cost of the waste treatment system. The allowance for an individual segment will be based on the cumulative allowable building cost to date minus any previous allowances.

12. The allowance for a phased funded waste treatment system will be based on the total allowable building cost of the waste treatment system. The allowance for all of the phases will be based on the allowable cost of the initial award of the subagreement for building the phases. The allowance for all of the phases will be included in the grant for the first phase for building the waste treatment system.

13. For a Step 2+3 project, if the grantee has not received a grant or advance for facilities planning, EPA will pay 30 percent of the Federal share of the estimated allowance upon grant award. Half of the remaining estimated allowance will be paid when design of the project is 50 percent complete. If the grantee has received a grant or advance

for facilities planning, EPA will pay half of the Federal share of the estimated design allowance when design of the project is 50 percent complete. Final payment of the Federal share of the allowance will be included in the first payment following the grantee's award of a subagreement for building the project.

14. The State will determine the amount of any advance under § 35.2025(b) not to exceed the Federal share of the estimated allowance. The State will also determine when the advance is given.

15. EPA will reduce the Federal share of the allowance by the amount of any advances the grantee received under § 35.2025(b).

Table 1.—Allowance for Facilities Planning and Design

Building cost	Allowance as a percentage of building cost
\$100,000	12.971
120,000	12.688
150,000	12.350
175,000	12.122
200,000	11.928
250,000	11.610
300,000	11.357
350,000	11.147
400,000	10.968
500,000	10.676
600,000	10.443
700,000	10.250
800,000	10.086
900,000	9.943
1,000,000	9.817
1,200,000	9.603
1,500,000	9.347
1,750,000	9.174
2,000,000	9.027
2,500,000	8.787
3,000,000	8.595
3,500,000	8.436
4,000,000	8.301
5,000,000	8.080
6,000,000	7.903
7,000,000	7.757
8,000,000	7.633
9,000,000	7.525
10,000,000	7.430
12,000,000	7.268
15,000,000	7.074
17,500,000	6.943
20,000,000	6.832
25,000,000	6.650
30,000,000	6.505
35,000,000	6.385
40,000,000	6.282
50,000,000	6.115
60,000,000	5.982
70,000,000	5.871
80,000,000	5.777
90,000,000	5.695
100,000,000	5.623

Table 2.—Allowance for Design only

Building cost	Allowance as a percentage of building cost
\$100,000	7.253
120,000	7.168
150,000	7.066

Table 2.—Allowance for Design only—
Continued

Building cost	Allowance as a percentage of building cost
175,000	6.997
200,000	6.937
250,000	6.839
300,000	6.759
350,000	6.692
400,000	6.635
500,000	6.541
600,000	6.465
700,000	6.401
800,000	6.347
900,000	6.299
1,000,000	6.257
1,200,000	6.184
1,500,000	6.096
1,750,000	6.036
2,000,000	5.984
2,500,000	5.899
3,000,000	5.831
3,500,000	5.773
4,000,000	5.724
5,000,000	5.643
6,000,000	5.577
7,000,000	5.522
8,000,000	5.475
9,000,000	5.434
10,000,000	5.397
12,000,000	5.335
15,000,000	5.259
17,500,000	5.207
20,000,000	5.163
25,000,000	5.089
30,000,000	5.030
35,000,000	4.981
40,000,000	4.938
50,000,000	4.868
60,000,000	4.811
70,000,000	4.764
80,000,000	4.723
90,000,000	4.688
100,000,000	4.656

NOTE.—Interpolate between values.

[FR Doc. 82-12859 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Wednesday
May 12, 1982

Part III

Environmental Protection Agency

Procurement Under Assistance
Agreements

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 33**

[OA-FRL 2102-81]

**Procurement Under Assistance
Agreements****AGENCY:** Environmental Protection
Agency.**ACTION:** Interim-final rule.

SUMMARY: This document establishes interim-final rules for procurement actions taken by assistance recipients under EPA's program for the "Grants for Construction of Treatment Works" program (40 CFR Part 35, Subpart I, CFA 66.418). It is designed to eliminate the procedural requirements formerly applying to that program and to rely to the maximum extent on recipient procurement systems, in accordance with Attachment O to OMB Circular A-102.

DATE: For the "Grants for Construction of Treatment Works" program, this regulation is effective for awards made after May 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Johnson, Grants Administration Division (PM-216), Environmental Protection Agency, Washington, D.C. 20460, (202) 755-0860.

SUPPLEMENTARY INFORMATION: On March 2, 1982, EPA published a proposed regulation governing procurement under all assistance programs (47 FR 8960). At that time, we indicated that we planned to make the regulation effective for grants for construction of treatment works when the program regulation becomes effective in April, 1982. This regulation implements that statement. The program regulation is also being published today elsewhere in this issue of the *Federal Register*.

Description of Major Issues

The preamble to the March 2, 1982 proposed regulation discussed in detail a number of issues which arose in the drafting of the Part 33 regulations. Since EPA's position has not changed, we have not repeated those discussions here. Our discussion of issues here is limited to areas on which a significant number of comments were received and to those on which we have made changes in the regulation. The remainder of the comments received and those received too late to be considered in drafting this interim-final regulation will be addressed when Part 33 is published in final.

*Applicability of Procurement
Requirements to Facilities Planning and
Design Services*

The Municipal Wastewater Treatment Construction Grant Amendments of 1981 (Pub. L. 97-117), enacted December 29, 1981, prohibit EPA grants exclusively for facilities planning or design services. Instead, EPA will make an allowance in its grant assistance for non-Federal funds expended by the recipient for facilities planning and design services. Therefore, services for facilities planning and project design will not be subject to EPA procurement requirements in order for the allowance to be awarded. However, if the recipient chooses to use the architect or engineer who provided facilities planning and design services for services during construction, it must follow some of the requirements in this Part. (See § 33.715.)

*Applicability of the Revised
Procurement Regulation to Active
Grants in the Construction Grant
Program*

The new Part 33 procurement regulations are effective for all subagreements under construction grants awarded after May 12, 1982. EPA has received several requests from recipients who have active construction grants that they also be allowed to voluntarily follow the new Part 33 procurement requirements. EPA believes that recipients should be given this opportunity. Therefore, EPA will allow any construction grant recipient who has a current grant to choose to follow the new Part 33 procurement procedures for any procurement action, including change orders, which the recipient executes after the date the recipient self-certifies its procurement system with EPA or the delegated State. However, the procurement requirements in effect when EPA awarded the grant (i.e., 40 CFR 35.936 through 35.939) will still apply to those actions executed before the date that a recipient with a current grant self-certifies.

*Procedural Requirements for Recipients
Who Do Not Certify Their Procurement
Systems, and for Recipients Who Have
Their Procurement Certification
Revoked by EPA*

We have received several questions concerning the procedural requirements that EPA will require of recipients who do not certify their procurement systems, or for recipients who have their procurement certification revoked by the award official. To make these procedural requirements known and to have all of EPA's procurement requirements in one place, we have

added Appendix A, "Procedural Requirements for Recipients Who Do Not Certify Their Procurement System, or for Recipients Who Have Their Procurement Certification Revoked by EPA," to Part 33. Appendix A contains the additional procedural requirements which are not contained in the body of Part 33, but which EPA will review when EPA conducts a pre-award review and approval (see § 33.115, "Procurement system review"). Recipients are not required to follow these additional procedural requirements if they have a certified procurement system.

Specifications

We received several comments on the language in the preamble to the March 2, 1982 proposed regulation which implied that a single material specification restricts competition, and which required that the recipient's procurement official justify the use of a specification which limits competition before the recipient issues the specification.

OMB Circular A-102, Attachment O, requires that all procurement transactions be conducted in a manner that provides maximum free and open competition. Any specification which has the effect of limiting competition is restrictive in the sense that it prevents a bidder from offering a product or a service which could meet the project's requirements.

Because a specification limits competition, however, does not mean it is improper. A specification is restrictive only when the restricted features are unnecessary, and therefore unduly restrict competition. (See Nash and Cibinic, *Federal Procurement Law*, Volume I, (3rd. edition, 1977) page 236.) Recipients may use restrictive specifications if the specifications reflect the recipient's minimum essential needs. (See Shnitzer, *Government Contract Bidding*, (1976) page 179.) Whether a specification represents the minimum essential needs of the recipient or unduly restricts competition depends on the facts in each procurement action. Consequently, the recipient's procurement officials must justify the use of a specification which does not provide for maximum free and open competition and must document their procurement file to this effect. The documentation should ordinarily be done before the recipient issues the specification to avoid the appearance of *post hoc* rationalization, and the recipient should justify adequately in writing the rational basis for the specification. In the event of a protest,

the protestor has the burden of showing that the specification, as written or as applied by the recipient, excludes the protestor from competition.

Minority and Women's Businesses

We received several comments on EPA's changes to the minority and women's businesses policy (MBE/WBE). As stated in the March 2, 1982 proposed regulation, EPA is in the process of developing a new minority business and women's business policy. Therefore, the comments we received concerning this issue will be used during the development of that policy. Also, our March 2, 1982 proposed regulation reserved the definition of a minority business and a women's business. We will define these terms in the new policy. Therefore, until EPA writes a definition for these terms in its new policy, the recipient should define these terms. However, any requirements or definitions which a recipient chooses to include in the contract specifications with regard to minority and women's business requirements will be mandatory for bidders and offerors.

Use of the Same Architect or Engineer During Construction

The new Part 33 procurement requirements allow recipients the option of using the same individual or firm who provided the facilities planning or design services for the project for architectural or engineering services during Step 3 construction of the project (see § 33.715 "Use of the same architect or engineer during construction"). In order to use this option, the recipient must ensure that the subagreements for the facility planning or design services meet the requirements in § 33.715. Those subagreements are subject only to the requirements listed in § 33.715.

However, when the recipient receives a Step 3 construction grant from EPA, the recipient must ensure that any subagreement, including any subagreement awarded to the firm or individual who will provide the services during construction, must meet all of the procurement requirements in Part 33. This may mean that the recipient will have to amend or renegotiate the individual's or firm's existing subagreement.

Regulation Development Process

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We have determined that this regulation is not "major" as it will not have a substantial

impact on the economy. Consequently, the regulation is not subject to the impact analysis requirements of Executive Order 12291.

In accordance with the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq* (the Act), the reporting or recordkeeping provisions that are included in this interim-final rule have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Act.

List of Subjects in 40 CFR Part 33

Advertising, Conflict of interest, Environmental protection, Grant programs—environmental protection.

This regulation was submitted to OMB for review as required by Executive Order 12291.

Dated: May 4, 1982.

John W. Hernandez, Jr.,
Acting Administrator.

PROCUREMENT SYSTEM CERTIFICATION FORM FOR APPLICANTS FOR EPA ASSISTANCE Form approved OMB No. —

Section I.—Instructions

This form must accompany each application for EPA assistance. If the applicant has certified its procurement system to EPA within the past two years and the system has not been substantially revised, check block *a* in Section II, then sign and date the form. If the system has not been certified within the past two years, part *b* of Section II must be completed.

Section II.—Certification

☐ *a.* I affirm that the applicant has within the past two years certified its procurement system to EPA as complying with 40 CFR Part 33 and that the system has not been substantially revised. The date of the applicant's latest certification is (month, year).

☐ *b.* Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: (Check one of the following)

☐ *1.* *Certify* that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 including the attached subparts before undertaking any procurement action with EPA assistance/funds.

Please furnish citations to applicable state or local ordinances and regulations. Citations

☐ *2.* *Do not certify.* The applicant will follow the requirements of 40 CFR Part 33 with EPA review and pre-award approval of proposed procurement actions that will use EPA assistance/funds.

Typed name and title of Chief Executive Officer

Signature _____

Date _____

EPA form 5700-48.

Below is a list of subparts and sections of 40 CFR Part 33 which contain some but not all of the requirements for procurements under EPA assistance. The purpose of this list is to assist in the evaluation of the applicant's procurement system to determine if it is certifiable as meeting the basic Federal procurement principles as articulated in Part 33. As such, this section highlights certain aspects of the regulations which the recipient shall use in its evaluation process and is not intended to replace a detailed reading of the Part 33 requirements themselves.

Part 33 reference	Section title—summary of requirements
33.210.....	<i>Subagreement Administration</i> —system must ensure that contractors perform in accordance with all applicable contract requirements.
33.220.....	<i>Limitation on recipient award</i> —system must consider listed factors in determining contractor responsibility.
33.230.....	<i>Competition</i> —system must have procurement transaction procedures that provide maximum open and free competition.
33.235.....	<i>Profits</i> —system procedures must allow only fair and reasonable profits to contractors.
33.240.....	<i>Small, minority, women's and labor surplus area businesses</i> —system must provide for use of these businesses as specified in this section.
33.250.....	<i>Documentation</i> —system must require that procurement records and files for purchases over \$10,000 include items specified in this section.
33.255.....	<i>Specifications</i> —system procedures for establishing specifications for products or services to be procured must meet requirements of this section.
33.265.....	<i>Bonding and insurance</i> —system procedures and requirements related to bonding and insurance must meet requirements of this section.
33.270.....	<i>Code of conduct</i> —system must have a written code of standards of conduct meeting the requirements of this section.
33.275.....	<i>Federal cost principles</i> —system procedures for determining allowable costs must comply with the cost principles specified in this section.
33.285.....	<i>Prohibited types of contracts</i> —system may not allow use of cost-plus-percentage-of-cost (multiplier) or percentage-of-construction-cost types of contracts.
33.290.....	<i>Cost and price considerations</i> —system procedures must allow for consideration of cost and price as required in this section.
33.295.....	<i>Lower tier subagreements</i> —system must provide that subagreements below the first tier comply with all provisions of 40 CFR specified in this section.
33.305-310.....	<i>Small purchase</i> —system small purchase procedure must meet requirements of these sections.
33.405-435.....	<i>Formal advertising</i> —system procedures related to formal advertising, including those for bidding documents and contract awards, must meet the requirements of these sections.
33.505-535.....	<i>Competitive negotiation</i> —system procedures for competitive negotiation must meet the requirements of these sections.
33.605.....	<i>Noncompetitive negotiation</i> —systems procedures for noncompetitive negotiation must meet the requirements of this section.

Subparts C-G	System must comply with requirements in these subparts—
C.....	<i>Clean Water Act Requirements</i> —subpart applies to procurement under assistance agreements for construction of treatment works under the Clean Water Act.
D.....	<i>Requirements for Institutions of Higher Education and Other Non-profit Organizations</i> —subpart describes the procurement requirements for nonprofit organizations.
E.....	<i>Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980</i> —subpart describes the procurement method requirements for recipients of these cooperative agreements.
F.....	<i>Subagreement Provisions</i> —subagreements for procurement under EPA assistance must contain the appropriate clauses, or their equivalent, specified in this subpart.
G.....	<i>Protests</i> —subpart applies to all applicants for EPA assistance except for nonprofit organizations.

Accordingly, Title 40 Chapter I is amended by revising Part 33 to read as follows:

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Sec.

- 33.001 Applicability and scope of this Part.
33.005 Definitions.

Subpart A—Procurement System Evaluation

- 33.105 Applicability and scope of this subpart.
33.110 Applicant and recipient certification.
33.115 Procurement system review.

Subpart B—Procurement Requirements

- 33.205 Applicability and scope of this subpart.
33.210 Recipient responsibility.
33.215 EPA responsibility.
33.220 Limitation on subagreement award.
33.225 Violations.
33.230 Competition.
33.235 Profits.
33.240 Small, minority, women's, and labor surplus area businesses.
33.245 Privity of subagreement.
33.250 Documentation.
33.255 Specifications.
33.260 Intergovernmental agreements.
33.265 Bonding and insurance.
33.270 Code of Conduct.
33.275 Federal cost principles.
33.280 Payment to consultants.
33.285 Prohibited types of subagreements.
33.290 Cost and price considerations.
33.295 Lower tier subagreements.

Small Purchases

- 33.305 Small purchase procurement method.
33.310 Small purchase procedures.
33.315 Requirements for competition.

Formal Advertising

- 33.405 Formal advertising procurement method.
33.410 Public notice and solicitation of bids.
33.415 Time for preparing bids.
33.420 Adequate bidding documents.
33.425 Public opening of bids.
33.430 Award to lowest, responsive, responsible bidder.

Competitive Negotiation Sec.

- 33.505 Competitive negotiation procurement method.
33.510 Public notice.
33.515 Evaluation of proposals.
33.520 Negotiation and award of subagreement.
33.525 Optional procedure for negotiation and award of subagreement for architectural and engineering services.

Noncompetitive Negotiation

- 33.605 Noncompetitive negotiation procurement method.

Subpart C—Clean Water Act Requirements

- 33.705 Applicability and scope of this subpart.
33.710 Buy American.
33.715 Use of the same architect or engineer during construction.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

- 33.805 Applicability and scope of this subpart.
33.810 Nonapplicable subagreement clauses.
33.815 Nonapplicable procurement provisions.
33.820 Additional procurement requirements.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

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33.1110 Limitations on protest appeals.
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33.1135 Award official's review.

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.001 Applicability and scope of this part.

(a) This Part applies to all assistance agreements awarded after the effective date of this Part. For assistance agreements awarded before the effective date, this Part will apply only to those procurement actions conducted by the recipient after the date the recipient's self-certification request under § 33.110 of this Part is accepted by the award official.

(b) This Part:

- (1) Describes EPA's procurement system evaluation process.
- (2) Identifies the minimum requirements for the procurement of supplies, services, and construction under EPA assistance agreements.
- (3) Identifies an additional specification requirement for procurement under assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subpart E and I.
- (4) Identifies the procurement standards that institutions of higher education and other nonprofit organizations must follow.
- (5) Identifies the provisions that recipients of EPA assistance agreements must include in their subagreements.
- (6) Describes the procedures that EPA will use to handle appeals concerning the award of a subagreement by the recipient of an EPA assistance agreement.

(c) This Part does not apply to work beyond the scope of the project for which an assistance agreement is awarded (i.e., ineligible work).

(d) This Part does not apply to expenses for services for which the recipient will receive an allowance or a potential recipient will receive an advance of an allowance under 40 CFR Part 35, Subpart I.

(e) This Part supplements the requirements in (1) 40 CFR Part 30 "General Assistance Regulations," and (2) 40 CFR Part 32, "Debarments and Suspensions under EPA Assistance Programs."

(f) The following types of recipients must comply with the specified subparts in this Part:

(1) Recipients of assistance agreements for the construction of treatment works awarded under 40 CFR Part 35, Subpart E and I must follow the requirements in all of the subparts except Subpart D.

(2) All other State and local government recipients must follow the requirements in all subparts in this Part except Subparts C and D.

(3) Institutions of higher education, hospitals, and other nonprofit

organizations must follow the requirements in all Subparts of this Part except as stated in Subpart D.

(4) Recipients of cooperative agreements under the Comprehensive Response, Compensation, and Liability Act of 1980, must follow the requirements in all subparts except Subparts C and D.

(g) In the construction of treatment works program under the Clean Water Act (33 U.S.C. 1251 et seq.), it is EPA's policy to delegate determinations on individual projects to State agencies to the maximum extent possible (see 40 CFR Part 35, Subpart F). This Part uses the term award official. To the extent that the award official for a treatment works assistance agreement delegates responsibility for determining compliance with the requirements of this Part (except for Subpart G "Protests") to a State agency under a delegation agreement (40 CFR 35.1130), the term award official may be read State agency.

§ 33.005 Definitions.

(a) Words and terms not defined below shall have the meaning given to them in 40 CFR Part 30 and 40 CFR Part 35.

(b) As used in this Part, the following words and terms mean:

Architectural or engineering (A/E) services. Consultation, investigations, and reports, and services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Construction. Erection, building, acquisition, alteration, remodeling, improvement, extension, modification, replacement, or correction of buildings, structures or other property.

Construction also includes remedial actions in response to a release or a threat of a release at an uncontrolled hazardous waste facility as determined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Contractor. Any party to whom a recipient awards a subagreement.

Cost analysis. The review and evaluation of each element of subagreement cost to determine reasonableness, allocability, and allowability.

Minority Business. [Reserved]

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed subagreement price based on adequate price competition,

previous experience with similar work, established catalog or market price, law, or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on Federal procurement principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of "fee.")

Services. A contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents, e.g., reports, design drawings, specifications. This term does not include employment agreements or collective bargaining agreements.

Small business. A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

Subagreement. A written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for services, supplies, equipment, or construction necessary to complete the project. Subagreements include contracts and subcontracts for personal and professional services, agreements with consultants, and purchase orders.

Women's Business. [Reserved]

Subpart A—Procurement System Evaluation

§ 33.105 Applicability and scope of this subpart.

(a) This subpart applies to all recipients of EPA assistance agreements.

(b) For procurements involving EPA funds, recipients shall use their own procurement policies and procedures if those policies and procedures reflect applicable Federal, State, and local laws and regulations, and at least meet the standards set forth in this Part.

(c) This subpart describes when EPA will review the recipient's procurement practices.

§ 33.110 Applicant and recipient certification.

(a) It is the applicant's and recipient's responsibility to evaluate its own procurement system and to determine whether its system meets the requirements in this Part.

(b) After evaluating its procurement system, the applicant or recipient will complete the Procurement System Certification Form For Applicants For EPA Assistance (EPA Form 5700-48). The applicant or recipient will certify that:

(1) Its system will meet the intent of all the requirements in this Part before

any procurement action with EPA assistance is undertaken.

(2) Its current system does not meet the intent of the requirements of this Part, and instead, the applicant will follow the requirements of 40 CFR Part 33 and will allow EPA review and approval of proposed procurement actions that will use EPA funds. The additional requirements for EPA review and approval are contained in Appendix A to this Part.

(c) The applicant must submit the signed certification form to the award official with the assistance application.

(d) The certification will be valid for two years or the project period specified in the assistance agreement, whichever is greater, unless the recipient substantially revises its procurement system, or the award official determines that the recipient is not following the requirements in this Part, see § 33.115(b). If the recipient substantially revises its procurement system, the recipient must evaluate its revised system to ensure that the system still meets the requirements in this Part.

§ 33.115 Procurement review.

(a) EPA reserves the right to review a recipient's procurement system or procurement action:

(1) To determine if the recipient is following the procurement requirement in this part; or

(2) When there is sufficient reason to do so based on the following sources of information:

(i) Information concerning the review or certification of the recipient's procurement system or actions by other Federal agencies or Congress;

(ii) Information from the recipient's cognizant audit agency;

(iii) Information from State agencies and organizations independent of the recipient's procurement activity;

(iv) Recipient responses to the procurement system certification form;

(v) Previous EPA experience with the recipient; and

(vi) Information from contractors or prospective contractors.

(b) If the award official determines that the recipient is not following the procurement requirements it certified it would follow, the award official shall revoke the recipient's certification and:

(1) Apply the sanctions in 40 CFR Part 30; or

(2) Require that the recipient follow the procurement requirements in this Part, including the procedural requirements in Appendix A, for future procurement actions.

(c) The recipient may re-certify its procurement system if it shows the

award official that it has corrected the procurement deficiencies noted by the award official.

Subpart B—Procurement Requirements

§ 33.205 Applicability and scope of this subpart.

This subpart contains:

(a) The recipient's and EPA's responsibilities; and

(b) The minimum procurement standards for each recipient's procurement system.

§ 33.210 Recipient's procurement responsibilities.

(a) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of subagreements entered into under the assistance agreement. This includes issuance of invitations for bids or requests for proposals, selection of contractors, award of subagreements, settlement of protests, claims, disputes, and other related procurement matters.

(b) A recipient may request technical and legal assistance from the award official for the administration and enforcement of any subagreement awarded under this Part. The award official's assistance does not relieve the recipient from its responsibilities identified in this Part.

(c) The recipient shall maintain a subagreement administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their subagreements.

(d) The recipient shall review its proposed procurement actions to avoid purchasing unnecessary or duplicative items.

(e) The recipient shall consider consolidating its procurement or dividing it into parts to obtain a more economical purchase.

(f) Where appropriate, the recipient shall make an analysis of lease versus purchase alternatives in its procurements actions.

(g) A recipient of a remedial action cooperative agreement awarded under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, must obtain the EPA award official's approval to use a procurement method other than the formal advertising method (see Subpart E).

(h) Innovative procurement methods or procedures may be used by recipients with the prior written approval of the award official.

§ 33.215 EPA responsibility.

(a) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

(b) If the recipient has not certified its procurement system under § 33.110 and if the procurement action or change order is expected to exceed \$100,000, EPA may review the recipient's proposed subagreements and related procurement documents (see Appendix A), and approve the recipient's compliance with the requirements of this Part.

§ 33.220 Limitation on subagreement award.

(a) The recipient shall award subagreements only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement.

(b) Contractors shall meet the requirements of § 30.340-2(a) through (d) and (g) of this subchapter.

(c) The recipient shall not make awards to contractors who have been suspended, debarred, or voluntarily excluded under 40 CFR Part 32 or to contractors on the EPA List of Violating Facilities (see 40 CFR Part 15).

§ 33.225 Violations.

Violations of law are to be referred to the local, State, or Federal authority having the proper jurisdiction.

§ 33.230 Competition.

(a) All procurement transactions, without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition.

(b) Procurement practices shall not unduly restrict or eliminate competition. Examples of practices considered to be unduly restrictive include:

- (1) Noncompetitive practices between firms;
- (2) Organizational conflicts of interest;
- (3) Unnecessary experience and bonding requirements;
- (4) State or local laws, ordinances, regulations or procedures which give local or in-State bidders or proposers preference over other bidders or proposers in evaluating bids or proposals; and
- (5) Placing unreasonable requirements on firms in order for them to qualify to do business.

(c) The recipient may use a prequalification system if it:

- (i) Updates the prequalified list at least every six months;
- (ii) Reviews and acts on each request for prequalification, if the request is made more than 30 days before the

closing date for receipt of proposals or bid opening, as appropriate; and

(iii) Gives adequate public notice of its prequalification procedure in accordance with the public notice procedures in §§ 33.415 or 33.510, as appropriate.

(iv) If the recipient uses a prequalified list for persons or firms doing business with the recipient, it must follow the requirements in (c) (i) through (iii) of this section, but a prequalified list of persons or firms may not be used unless that procedure enhances competition. However, this restriction does not apply to § 33.525 "Optional procedures for negotiation and award of a subagreement for architectural and engineering services."

§ 33.235 Profit.

(a) Recipients must assure that only fair and reasonable profits are paid to contractors awarded subagreements under EPA assistance agreements.

(b) For each subagreement in which there is no price competition and where price is based on cost analysis, any profit shall be negotiated as a separate element of price.

(c) Profit included in a formally advertised, competitively bid, fixed price subagreement shall be considered reasonable.

(d) Commercially available products sold to the general public shall not be covered by this section.

§ 33.240 Small, minority, women's, and labor surplus area businesses.

(a) It is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, equipment, construction, and services. Affirmative steps shall include the following:

- (1) Including qualified small, minority, and women's businesses on solicitation lists.
- (2) Assuring that small, minority, and women's businesses are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority, and women's businesses.
- (4) Establishing delivery schedules, where the requirements of the work permit, which will encourage participation by small, minority, and women's businesses.
- (5) Using the services and assistance of the Small Business Administration

and the Office of Minority Business Enterprise of the U.S. Department of Commerce.

(6) Requiring each party to a subagreement to take the affirmative steps in paragraphs (a)(1) through (a)(5) of this section.

(b) [Reserved]

(c) Recipients are encouraged to procure goods and services from labor surplus area firms.

§ 33.245 Privilege of subagreement.

Neither EPA nor the United States shall be a party to any subagreement nor to any solicitation or request for proposals.

§ 33.250 Documentation.

(a) Procurement records and files for procurements in excess of \$10,000 shall include the following:

- (1) Basis for contractor selection;
- (2) Written justification for selection of the procurement method;
- (3) Written justification for use of any specification which does not provide for maximum free and open competition;
- (4) Selection of type of subagreement; and

(5) Basis for award cost or price, including a copy of the cost of price analysis made under § 33.290 and documentation of negotiations.

(b) The reasons for rejecting any or all bids and the justification for procurements on noncompetitively negotiated basis shall be available for public inspection.

§ 33.255 Specifications.

Recipients must incorporate in their specifications a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description shall include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated. (An additional specification requirement for the construction of treatment works under

40 CFR Part 35, Subpart E and I is contained in § 33.710.)

§ 33.260 Intergovernmental agreements.

(a) To foster greater economy and efficiency, recipients are encouraged to enter into State and local intergovernmental agreements for common procurement or use of goods and services.

(b) All procurements under an intergovernmental agreement must follow the procurement requirements in this Part except for procurements that are:

- (1) Incidental to the purpose of the assistance agreement, and
- (2) Made through a central public procurement unit.

§ 33.265 Bonding and insurance.

(a) These requirements apply to subagreements for construction only.

(b) The recipient shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction subagreement exceeds \$100,000.

(c) For those subagreements exceeding \$100,000, the award official may accept the recipient's bonding policy and requirements provided that the Government's interest is adequately protected. Otherwise the minimum bonding requirements are:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the subagreement price. A "performance bond" is one executed in connection with a subagreement to secure fulfillment of all the contractor's obligations under such subagreement.

(3) A payment bond on the part of the contractor for 100 percent of the subagreement price. A "payment bond" is one executed in connection with a subagreement to assure payment as required by law to all persons supplying labor and material in the execution of the work provided for in the subagreement.

(d) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

(e) The flood hazard area requirements of the Flood Disaster

Protection Act of 1973 contained in Part 30 apply.

§ 33.270 Code of conduct.

(a) Recipients shall maintain a written code or standards of conduct which shall govern the performance of its officers, employees, or agents engaged in the award and administration of subagreements supported by EPA funds. No employee, officer, or agent of the recipient shall participate in selection, or in the award or administration of a subagreement supported by EPA funds if a conflict of interest, real or apparent, would be involved.

(b) Such a conflict would arise when:

(1) Any employee, officer, or agent of the recipient, any member of their immediate families, or their partners, have a financial or other interest in the firm selected for award; or when

(2) An organization which may receive or has been awarded a subagreement employs, or is about to employ any person under paragraph (b)(1) of this section.

(c) The recipient's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or other parties to subagreements.

(d) Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

(e) To the extent permitted by State or local law or regulations, the code of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of the code by the recipient's officers, employees, or agents, or by contractors or their agents.

§ 33.275 Federal cost principles.

The following are the cost principles applicable to assistance arguments and subagreements:

(a) State and local governments must comply with OMB Circular A-87 to determine allowable costs.

(b) Educational institutions must comply with OMB Circular A-21 to determine allowable costs and with OMB Circular A-88 for indirect cost rates.

(c) Nonprofit institutions must comply with OMB Circular A-122 to determine allowable costs.

(d) All other recipients, contractors, and subcontractors must comply with the cost principles contained in the Federal Procurement Regulations (41 CFR 1-15.2 and, if appropriate, 1-15.4) to determine allowable costs.

§ 33.280 Payment to consultants.

(a) For all EPA assistance agreements, the maximum daily rate paid to individual consultants retained by recipients, or a recipient's contractors or subcontractor will not exceed the maximum daily rate for a GS-18. This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed, which will be paid in accordance with the normal travel reimbursement practices.

(b) Subagreements for services which are awarded using the procurement requirements in this Part are not affected by this limitation.

§ 33.285 Prohibited types of subagreements.

The cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) and the percentage-of-construction-cost types of subagreements shall not be used.

§ 33.290 Cost and price considerations.

(a) The recipient shall conduct a cost analysis of all negotiated change orders and all negotiated subagreements estimated to exceed \$10,000.

(b) The recipient shall conduct a price analysis of all formally advertised procurements estimated to exceed \$10,000 if there are fewer than three bidders.

(c) For negotiated procurement, contractors and subcontractors shall submit to the recipient cost or pricing data in support of their proposals.

§ 33.295 Lower tier subagreements.

All subagreements below the first tier must comply with the following provisions:

(a) Section 33.285 (Prohibited types of subagreements);

(b) Section 33.240 (Small, minority, women's, and labor surplus area businesses);

(c) Section 33.290 (Cost and price considerations);

(d) Applicable subagreement clauses contained in Subpart F;

(e) Section 33.275 (Federal cost principles);

(f) 40 CFR Part 32 (Debarment and Suspension) and the prohibition in Part 30 against fraud and other unlawful or corrupt practices; and

(g) Subpart C (Clean Water Act Requirement), if applicable.

Small Purchases**§ 33.305 Small purchase procurement method.**

If the aggregate amount involved in any one procurement transaction does not exceed \$10,000, including all estimated handling and freight charges, overhead, and profit, the recipient may use small purchase procedures.

§ 33.310 Small purchase procedures.

Small purchase procedures are relatively simple procurement methods that are sound and appropriate for a procurement of services, supplies, or other property costing in the aggregate not more than \$10,000.

§ 33.315 Requirements for competition.

(a) Recipients shall not divide a procurement into smaller parts to avoid the dollar limitation for competitive procurement.

(b) Recipients shall obtain price or rate quotations from an adequate number of qualified sources.

Formal Advertising**§ 33.405 Formal advertising procurement method.**

(a) The requirements in §§ 33.405 through 33.430 apply to all formally advertised subagreements in excess of \$10,000. Formal advertising means the public solicitation of sealed bids and subagreement award based on a fixed price (lump sum, unit price, or a combination of the two) to the lowest, responsive, responsible bidder.

(b) Formal advertising requires at a minimum:

(1) A complete, adequate, and realistic specification or purchase description of what is required;

(2) Two or more responsible bidders which are willing and able to compete effectively for the recipient's business;

(3) A procurement that lends itself to the award of a fixed-price subagreement; and

(4) The selection of the successful bidder made principally on the basis of price.

§ 33.410 Public notice and solicitation of bids.

The recipient shall give adequate public notice of the solicitation, inviting bids and stating when and how the bidding documents may be obtained and examined.

§ 33.415 Time for preparing bids.

The recipient must allow adequate time between the date the public notice is first published and the date by which bids must be submitted.

§ 33.420 Bidding documents.

Bidding documents shall include:

(a) A complete statement of work to be performed, including, where appropriate, design drawings and specifications and the required performance schedule;

(b) The terms and conditions of the subagreement to be awarded, including, where appropriate, payment, delivery schedules, point of delivery, and acceptance criteria;

(c) A clear explanation of the method of bidding and the method of evaluating bid prices, and the basis and method for awarding the subagreement;

(d) The responsibility requirements or criteria which will be employed in evaluating bidders;

(e) The prevailing wage determination, made under the Davis-Bacon Act, if applicable; and

(f) The deadline and place to submit bids and a copy of § 33.295, Subpart F and Subpart G.

§ 33.425 Public opening of bids.

The recipient shall publicly open bids at the place, date, and time announced in the bidding documents.

§ 33.430 Award to the lowest, responsive, responsible bidder.

(a) The recipient shall evaluate all bids in accordance with the methods and criteria in the bidding documents.

(b) The recipient shall award a fixed-price subagreement to the lowest, responsive, responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining the low bid. Payment discounts may be used to determine low bid only when prior experience of the recipient indicates that such discounts are generally taken.

(c) The recipient may reject all bids only when it has sound, documented business reasons which are in the best interest of the program for which EPA assistance is awarded (see § 33.250 "Documentation").

Competitive Negotiation**§ 33.505 Competitive negotiation procurement method.**

(a) The requirements in §§ 33.505 through 33.525 apply to all competitively negotiated subagreements in excess of \$10,000.

(b) Competitive negotiation may be used only if conditions are not appropriate for the use of the formal advertising method of procurement.

§ 33.510 Public notice.

(a) The recipient must give adequate public notice for competitively negotiated procurements.

(b) The notice of a request for proposals shall invite proposals and state the method by which associated documents may be obtained and examined and the basis upon which the award will be made.

(c) Requests for proposals must be in writing and must contain the information necessary to enable a prospective offeror to prepare a proposal.

(d) Offerors must be informed of all evaluation criteria, and of the relative importance attached to each criterion.

(e) Requests for proposals must clearly state the deadline and place to submit proposals.

§ 33.515 Evaluation of proposals.

(a) Recipients must uniformly and objectively evaluate all proposals submitted in response to the request for proposals.

(b) Recipients must base their determination of best qualified and qualified offerors solely on the evaluation criteria stated in the request for proposals.

§ 33.520 Negotiation and award of subagreement.

(a) If the recipient does not base its award of the subagreement on initial proposals, the recipient may conduct negotiations with all of the best qualified offerors to clarify that the offerors fully understand, and conform to, the solicitation requirements. All of the best qualified offerors shall be given the same opportunities to negotiate or revise their proposals as to price and other evaluation criteria. Before the recipient makes the award, the recipient may permit revisions for the purpose of obtaining best and final offers. During negotiations, the recipient shall not disclose the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

(b) The recipient shall award the subagreement to the responsible offeror whose proposal is determined in writing to be the most advantageous to the recipient, taking into consideration price and other evaluation criteria set forth in the request for proposal.

(c) The recipient shall promptly notify unsuccessful offerors that their proposals were rejected.

§ 33.525 Optional procedure for negotiation and award of a subagreement for architectural and engineering services.

(a) This optional procedure for negotiating and awarding a subagreement for architectural and engineering services may be used if price is not an evaluation criterion set forth in the request for proposals.

(b) The recipient may negotiate and award a subagreement for architectural or engineering services with an offeror on a prequalified list.

(c) The recipient shall negotiate fair and reasonable compensation with the best qualified offeror. If the recipient and the best qualified offeror cannot agree on the amount of compensation, the recipient shall formally terminate negotiations with the selected offeror. The recipient shall then negotiate with other qualified offerors, in the order of their respective qualification, until compensation can be agreed upon.

(d) The recipient shall award the subagreement to the offeror whose proposal is determined in writing to be the best qualified based upon the evaluation criteria set forth in the request for proposals, and after the negotiation of fair and reasonable compensation.

(e) The recipient shall promptly notify unsuccessful offerors that their proposals were rejected.

Noncompetitive Negotiation

§ 33.605 Noncompetitive negotiation procurement method.

(a) Noncompetitive negotiation may be used only when the award of a subagreement is not feasible under small purchase, formal advertising, or competitive negotiation procedures.

(b) The recipient may award a noncompetitively negotiated subagreement only under the following circumstances:

(1) When the item is available only from a single source;

(2) When a public exigency or emergency exists and the urgency for the requirement will not permit a delay incident to competitive procurement;

(3) When, after solicitation from a number of sources, competition is determined to be inadequate; or

(4) When the EPA award official authorizes noncompetitive negotiation, subject to the limitation in § 33.715(a)(2).

Subpart C—Clean Water Act Requirements

§ 33.705 Applicability and scope of this subpart.

Recipients of an assistance agreement awarded under 40 CFR Part 35, Subparts E and I must comply with the following requirements.

§ 33.710 Buy American.

Section 215 of the Clean Water Act requires that contractors give preference for the use of domestic material in the construction of the treatment works for which EPA awards assistance.

(a) Domestic construction material must be used in preference to nondomestic materials if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic materials including all costs of delivery to the construction site, and any applicable duty, whether or not assessed. Computations will normally be based on costs on the date of opening of bids or proposals.

(b) The award official may waive the Buy American provision based upon those factors that the award official considers relevant, including:

(1) Such use is not in the public interest;

(2) The cost is unreasonable;

(3) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(4) The articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured and not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(5) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(c) Notwithstanding any other provision of this Part, bidding documents and subagreements shall contain the "Buy American" provision in § 33.1030.

§ 33.715 Use of the same architect or engineer during construction.

(a) If the recipient is satisfied with the qualifications and performance of the architect or engineer who provided facilities planning or design services for the project and wishes to retain that firm or individual to provide architectural or engineering services during construction of the project, it may do so without further public notice and evaluation of qualifications provided:

(1) EPA awarded the recipient a facilities planning (Step 1) and a design grant (Step 2), or only a design grant (Step 2), and the recipient procured the architect or engineer using the EPA procurement regulations in effect when EPA awarded the grant;

(2) The award official's approval for noncompetitive procurement under § 33.605(b)(4) is based on justification other than the use of the same individual or firm for architectural or engineering services during construction that provided facilities planning or design services for the project; or

(3) The initial request for proposals clearly stated that there is a possibility that the firm or individual who is selected may be awarded a subagreement for services during construction; and

(4) The recipient attests that the firm or individual was selected for facilities planning or design services in accordance with procedures in:

(i) Section 33.230 "Competition," and (ii) Section 33.250(a) (1), (2) and (3), and (b) "Documentation," and

(iii) No employee, officer, or agent of the recipient, any member of their immediate families, or their partners, have financial or other interest in the firm selected for award; and

(iv) None of the recipient's officers, employees, or agents solicited nor accepted gratuities, favors, or anything of monetary value from contractors, or other parties to subagreements, and

(v) Sections 33.305 through 33.315 "Small Purchase," or

(vi) Sections 33.405 through 33.430 "Formal Advertising," or

(vii) Sections 33.505 through 33.525 "Competitive Negotiation."

(b) If the recipient uses the same individual or firm which provided the facilities planning or design services to provide architectural or engineering services during construction, subagreements funded with EPA grant funds (i.e. Step 3) must meet all of the procurement provisions in this part.

Subpart D—Requirements for Institutions of Higher Education and Other Nonprofit Organizations

§ 33.805 Applicability and scope of this subpart.

Recipients who are subject to the provisions of A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" are not subject to all of the requirements in this Part.

§ 33.810 Nonapplicable subagreement provisions.

The following clauses in Subpart F of this Part do not apply to institutions of higher education and other nonprofit organizations:

(a) Energy efficiency (§ 33.1024);

(b) Changes (§ 33.1030,3);

(c) Differing site conditions (§ 33.1030,4); and

(d) Price reduction for defective cost or pricing data (§ 33.1030,8).

§ 33.815 Nonapplicable procurement provisions.

The following procurement provisions do not apply to institutions of higher

education and other nonprofit organizations:

(a) Sections 33.405 through 33.430 "Formal advertising;"

(b) Sections 33.505 through 33.525 "Competitive negotiation;"

(c) Section 33.605 "Noncompetitive negotiations" (see § 33.820(b));

(d) The requirement in 33.270(a) "Code of conduct" to have a written code of conduct;

(e) The provisions of § 33.240 "Small, minority, women's, and labor surplus area businesses" which:

(1) Encourage the award of a fair share of contracts to women's and labor surplus area businesses;

(2) Require the specific affirmative action steps in § 33.240(a) (1) through (6). However, nonprofit organizations are required to make positive efforts to use small businesses and minority owned businesses as sources of supplies and services.

(f) Subpart G "Protests."

§ 33.820 Additional procurement requirements.

(a) Contractors that develop or draft specifications, requirements, statements of work, invitation for bids, or requests for proposals must be excluded from competing for awards from institutions of higher education and other nonprofit organizations resulting from the prior effort.

(b) For all proposed sole source contracts and where only one bid or proposal is received, the recipient must request the award official's prior approval to award the contract if the aggregate expenditure is expected to exceed \$10,000.

Subpart E—Requirements for Recipients of Remedial Action Cooperative Agreements Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

§ 33.905 Applicability and scope of this subpart.

(a) The requirements in this subpart apply only to remedial actions which EPA funds as a part of a cooperative agreement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. Activities under CERCLA other than remedial action activities are subject to the requirements in Subparts A, B, F and G.

(b) Studies, investigations, or engineering activities which precede a remedial action activity are not subject to the requirements in this subpart.

§ 33.910 Preference for formal advertising.

If a recipient wants to use a procurement method other than formal advertising, it must determine in writing that formal advertising is not appropriate and must receive the EPA award official's concurrence with the determination.

§ 33.915 Award official approval.

The award official shall approve the recipient's use of a procurement method other than formal advertising only after the recipient has completed remedial planning activities and selected a cost-effective alternative.

Subpart F—Subagreement Provisions

§ 33.1005 Applicability and scope of this subpart.

(a) This subpart applies to all EPA recipients and describes the minimum content of each subagreement (contract and subcontract).

(b) Nothing in this subpart shall be construed to prohibit a recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a subagreement.

§ 33.1010 Requirements for subagreement clauses.

Recipients shall include clauses that meet the requirements of §§ 33.1015 through 33.1024, in each procurement subagreement.

§ 33.1015 Subagreement provisions clause.

Each subagreement must include provisions defining a sound and complete agreement, including the:

(a) Nature, scope, and extent of work to be performed;

(b) Timeframe for performance;

(c) Total cost of the subagreement; and

(d) Payment provisions.

§ 33.1018 Equal employment opportunity clause.

All subagreements awarded in excess of \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

§ 33.1019 Anti-kickback clause.

All subagreements for construction (as defined by the Secretary of Labor) or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in the Department of

Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to EPA.

§ 33.1020 Minimum wage clause.

When required by the EPA assistance program legislation, all construction (as defined by the Secretary of Labor) subagreements in excess of \$2,000 awarded by recipients and any lower tier shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a subagreement shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to EPA.

§ 33.1021 Work hours and safety standards clause.

All subagreements in excess of \$2,000 for construction contracts (as defined by the Secretary of Labor) and in excess of \$2,500 for other subagreements which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than one and one half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary,

hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

§ 33.1022 Patents, data, and copyrights clause.

Subagreements shall include notice of EPA requirements and regulations pertaining to reporting and patent rights under any subagreement involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such subagreement and of EPA requirements and regulations pertaining to copyrights and rights in data contained in 40 CFR Part 30.

§ 33.1023 Violating facilities clause.

Subagreements in excess of \$100,000 shall contain a provision which requires contractor compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and EPA regulations (40 CFR Part 15) which prohibit the awarding of nonexempt Federal contracts, grants, or loans to facilities included on the EPA List of Violating Facilities. The provision shall require contractors to report violations to the EPA.

§ 33.1024 Energy efficiency clause.

Subagreements shall follow mandatory standards and policies on energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 33.1030 Model subagreement clauses.

(a) Recipients must include, when appropriate, the following fourteen clauses or their equivalent in each subagreement.

(b) Recipients may substitute other terms for "recipient" and "contractor" in their subagreements.

1. Supersession

The recipient and the contractor agree that this and other appropriate clauses in 40 CFR 33.1030 or their equivalent apply to the EPA grant-eligible work to be performed under this subagreement and that these clauses supersede any conflicting provisions of this subagreement.

2. Privity of Subagreement

This subagreement is expected to be funded in part with funds from the U.S. Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this subagreement or any lower tier subagreement. This subagreement is to be subject to regulations contained in 40 CFR Part 33 in effect on the date of the assistance award for this project.

3. Changes

(a) This clause in paragraph (a) applies only to subagreements for construction.

(1) The recipient may, at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the subagreement, including but not limited to changes:

- (i) In the specifications (including drawings and designs);
- (ii) In the time, method, or manner of performance of the work;
- (iii) In the recipient-furnished facilities, equipment, materials, services, or site; or
- (iv) Directing acceleration in the performance of the work.

(2) A change order shall also be any other written or oral order (including direction, instruction, interpretation or determination) from the recipient, which causes any change, provided the contractor gives the recipient written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.

(3) Except as provided in this clause, no order, statement, or conduct of the recipient shall be treated as a change under this clause or entitle the contractor to an equitable adjustment.

(4) If any change under this clause causes an increase or decrease in the contractor's cost or the time required to perform any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the subagreement modified in writing and, except for claims based on defective specifications, no claim for any change under paragraph (a)(2) above shall be allowed for any costs incurred more than 20 days before the contractor gives written notice as required in paragraph (a)(2). In the case of defective specifications for which the recipient is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with those defective specifications.

(5) If the contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under paragraph (1) of this change clause or the furnishing of a written notice under paragraph (2) of this clause, submit to the recipient a written statement setting forth the general nature and monetary extent of such claim. The recipient may extend the 30-day period. The statement of claim may be included in the notice under paragraph (2) of this change clause.

(6) No claim by the Contractor for an equitable adjustment shall be allowed if

made after final payment under this subagreement.

(b) *The clause in this paragraph applies only to subagreements for services.*

(1) The recipient may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the contractor's cost or time required to perform any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing. The contractor must assert any claim for adjustment under this clause in writing within 30 days from the date of receipt by the contractor of the notification of change unless the recipient grants additional time before the date of final payment.

(2) No services for which an additional compensation will be charged by the contractor shall be furnished without the written authorization of the recipient.

(c) *This clause in paragraph (c) applies only to subagreements for supplies.*

(1) The recipient may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this subagreement, in any one or more of the following:

- (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the recipient;
- (ii) method of shipment or packing; and
- (iii) place of delivery.

(2) If any change causes an increase or decrease in the cost or the time required to perform any part of the work under this subagreement, whether or not changed by any such order, an equitable adjustment shall be made in the subagreement price or delivery schedule, or both, and the subagreement shall be modified in writing. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the contractor of the notification of change. If the recipient decides that the facts justify such action, the recipient may receive and act upon any such claim asserted at any time before final payment under this subagreement. Where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the recipient shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the contractor from proceeding with the subagreement as changed.

4. Differing Site Conditions

(This clause is applicable only to construction subagreements.)

(a) The contractor shall promptly, and before such conditions are disturbed, notify the recipient in writing of:

- (1) subsurface or latent physical conditions at the site differing materially from those indicated in this subagreement, or
- (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this subagreement. The recipient shall promptly

investigate the conditions, and if it finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under this subagreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the subagreement modified in writing.

(b) No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in paragraph (a) of this clause. However, the recipient may extend the time prescribed in paragraph (a).

(c) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this subagreement.

5. Suspension of Work

(This clause is applicable only to construction subagreements.)

(a) The recipient may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the recipient may determine to be appropriate for the convenience of the recipient.

(b) If the performance of all or any part of the work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the recipient in administration of this subagreement, or by the recipient's failure to act within the time specified in this subagreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this subagreement (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this subagreement.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the contractor notified the recipient in writing of the act or failure to act involved (this requirement does not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the subagreement.

6. Termination

(a) This subagreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this subagreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This subagreement may be terminated in whole or in part in writing by the recipient for its convenience, provided that the contractor is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the recipient, an equitable adjustment in the price provided for in this subagreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the recipient because of the contractor's default. If termination for default is effected by the contractor, or if termination for convenience is effected by the recipient, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the recipient all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the contractor in performing this subagreement, whether completed or in process.

(e) Upon termination under paragraphs (a) or (b) above, the recipient may take over the work and may award another party of subagreement to complete the work under this subagreement.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the recipient. In such event, adjustment of the price provided for in this subagreement shall be made as provided in paragraph (c) of this clause.

7. Remedies

Except as may be otherwise provided in this subagreement, all claims, counter-claims, disputes, and other matters in question between the recipient and the contractor arising out of or relating to this subagreement or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the recipient is located.

8. Price Reduction for Defective Cost or Pricing Data

Note.—This clause is applicable to (1) any subagreement negotiated between the recipient and its contractor in excess of \$500,000; (2) negotiated subagreement amendments or change orders in excess of \$500,000 or 10 percent of the subagreement

whichever is less, affecting the price of a formally advertised, competitively awarded, fixed price subagreement; or (3) any lower tier subagreement or purchase order in excess of \$500,000 or 10 percent of the assistance agreement, whichever is less, under a subagreement other than a formally advertised, competitively awarded, fixed price subagreement. This clause is not applicable for subagreements to the extent that they are awarded on the basis of effective price competition.

The contractor and subcontractor, where appropriate, warrant that cost and pricing data submitted for evaluation with respect to negotiation of prices for negotiated subagreements, lower tier subagreements, and change orders is based on current, accurate, and complete data supported by their books and records. If the recipient or EPA determines that any price (including profit) negotiated in connection with this subagreement, any lower tier subagreement, or any amendment thereunder was increased by any significant sums because the data provided was incomplete, inaccurate, or not current at the time of submission, then such price or cost or profit shall be reduced accordingly; and the subagreement shall be modified in writing to reflect such action.

Note.—Since the subagreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with lower tier subagreements, the contractor may wish to include a clause in each lower tier subagreement requiring the lower tier subcontractor to appropriately indemnify the contractor. It is also expected that any lower tier subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by lower tier contractors.

9. Audit; Access to Records

(a) The contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on EPA grant work under this subagreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR Part 30, in effect on the date of execution of this subagreement. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission required under 40 CFR 33.290 for any negotiated subagreement or change order and a copy of the cost summary submitted to the recipient. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, recipient, and [the State] or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of inspection, audit and copying during normal business hours. The contractor will provide proper facilities for such access and inspection.

(b) If this is a formally advertised, competitively awarded, fixed price subagreement, the contractor agrees to make paragraphs (a) through (f) of this clause applicable to all negotiated change orders

and subagreement amendments affecting the subagreement price. In the case of all other types of prime subagreements, the contractor agrees to include paragraphs (a) through (f) of this clause in all his subagreements in excess of \$10,000 and all lower tier subagreements in excess of \$10,000 and to make paragraphs (a) through (f) of this clause applicable to all change orders directly related to project performance.

(c) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The contractor agrees to disclose all information and reports resulting from access to records under paragraphs (a) and (b) of this clause, to any of the agencies referred to in paragraph (a).

(e) Records under paragraphs (a) and (b) above, shall be maintained and made available during performance on EPA assisted work under this subagreement and until three years from the date of final EPA payment for the project. In addition, those records which relate to any controversy arising under an EPA assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim, or exception.

(f) This right of access clause (with respect to financial records) applies to:

- (1) Negotiated prime subagreements,
- (2) Negotiated change orders or subagreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price subagreement, and
- (3) Subagreements or purchase orders under any subagreement other than a formally advertised, competitively awarded, fixed price subagreement. However, this right of access does not apply to a prime subagreement, lower tier subagreement, or purchase order awarded after effective price competition, except:

- (i) With respect to records pertaining directly to subagreement performance, (excluding any financial records of the contractor.)
- (ii) If there is any indication that fraud, gross abuse, or corrupt practices may be involved or
- (iii) If the subagreement is terminated for default or for convenience.

10. Covenant Against Contingent Fees

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this subagreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the

full amount of such commission, percentage, brokerage, or contingent fee.

11. Gratuities

(a) If the recipient finds after a notice and hearing that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise), to any official, employee, or agent of the recipient, the State, or EPA in an attempt to secure a subagreement or favorable treatment in awarding, amending, or making any determinations related to the performance of this agreement, the recipient may, by written notice to the contractor, terminate this agreement. The recipient may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts on which the recipient bases such findings shall be in issue and may be reviewed in proceedings under the Remedies clause of this agreement.

(b) In the event this subagreement is terminated as provided in paragraph (a) the recipient may pursue the same remedies against the contractor as it could pursue in the event of a breach of the subagreement by the contractor, and (2) as a penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the recipient) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

12. Buy American

(This clause applies to subagreements awarded under 40 CFR Part 35, Subparts E and I.)

In accordance with section 215 of the Clean Water Act (33 USC 1251 et. seq.) and implementing EPA regulations and guidelines, the contractor agrees that preference will be given to domestic construction material by the contractor, subcontractors, materialmen, and suppliers in the performance of this subagreement.

13. Responsibility of the Contractor

(a) This clause in paragraph (a) applies to all subagreements for services.

(1) The contractor is responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.

(2) The contractor shall perform the professional services necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of the assistance agreement for this project.

(3) The owner's or EPA's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the

contractor of responsibility for the technical adequacy of his work. Neither the owner's nor EPA's review, approval, acceptance, or payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(4) The contractor shall be and shall remain liable, in accordance with applicable law, for all damages to the owner or EPA caused by the contractor's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the owner, owner-furnished data, or any third party. The contractor shall not be responsible for any time delays in the project caused by circumstances beyond the contractor's control.

(5) The contractor's obligations under this clause are in addition to the contractor's other express or implied warranties under this agreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment, or work.

(b) The clause in paragraph (b) applies only to subagreements for construction.

(1) The contractor agrees to perform all work under this agreement in accordance with this agreement's designs, drawings, and specifications.

(2) The contractor warrants and guarantees for a period of one (1) year from the date of substantial completion of the system that the completed system is free from all defects due to faulty materials, equipment or workmanship; and the contractor shall promptly make whatever adjustments or corrections necessary to cure such defects, including repairs of any damage to other parts of the system resulting from such defects. The owner shall give notice to the contractor of observed defects with reasonable promptness. In the event that the contractor fails to make adjustments, repairs, corrections or other work that may be made necessary by such defect, the owner may do so and charge the contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

(3) The contractor's obligations under this clause are in addition to the contractor's other express or implied warranties under this agreement or State law and in no way diminish any other rights that the owner may have against the contractor for faulty materials, equipment, or work.

14. Final Payment

Upon satisfactory completion of the work performed under this agreement, as a condition before final payment under this agreement, or as a termination settlement under this agreement, the contractor shall execute and deliver to the owner a release of all claims against the owner arising under or by virtue of this agreement, except claims which are specifically exempted by the contractor to be set forth therein. Unless otherwise provided in this agreement or by State law or otherwise expressly agreed to by the parties to this agreement, final payment under this agreement or settlement upon termination of this agreement shall not

constitute a waiver of the owner's claims against the contractor or his sureties under this agreement or applicable performance and payment bonds.

Subpart G—Protests

§ 33.1105 Applicability and scope of this subpart.

(a) This subpart sets forth the administrative process that EPA will use for the rapid resolution of protest appeals filed with the award official.

(b) A protest is a written complaint concerning the award of a recipient's subagreement filed with the recipient by a party with a direct financial interest adversely affected by a recipient's procurement action.

(c) A protest appeal is a complaint filed with the award official regarding the recipient's determination of protest.

§ 33.1110 Limitations on protest appeals.

(a) The award official shall not accept a protest appeal from a recipient's determination of protest until the protester has exhausted all administrative remedies at the recipient level.

(b) A protest appeal may only be filed with the award official for:

(1) Issues arising under the procurement provisions of this Part;

(2) Alleged violations of State or local law or ordinances and when the award official determines that there is a contravening Federal requirement;

(3) Provisions of Federal regulations applicable to direct Federal contracts, if such provisions are explicitly referred to or incorporated in this Part;

(4) Basic project design determinations which clearly relate to questions of source selection or application of restrictive specifications; or

(5) Award of lower tier subagreements;

(i) If the recipient mandated the award to a particular entity; or

(ii) If it were based on a violation of the requirements in § 33.295 "Lower tier subagreements."

§ 33.1115 General requirements.

(a) Any party with an adversely affected direct financial interest may file a written protest appeal with the award official in accordance with this subpart.

(b) The recipient is responsible for the prompt initial determination of the protest.

(c) The award official may summarily dismiss an appeal without proceedings under this subpart, if the protest or appeal is untimely or entirely addresses issues which are beyond the scope of this subpart, or the protester fails to

comply with the intent of the procedural requirements of this subpart.

(d) The award official may summarily deny a protest appeal, without proceedings under this subpart, if, after considering the facts in a light most favorable to the protester, the award official believes that the protest lacks merit.

§ 33.1120 Filing requirements for protest appeals.

(a) A protest appeal to the award official must be in writing and must adequately state the basis for the protest appeal. Appeals must be received by the award official within one week after the complaining party has received the recipient's determination of protest. If the last day falls on a Saturday, Sunday or holiday, the last day to submit a request shall be the next working day. A copy of the recipient's determination of protest and other documentation in support of the appeal shall be transmitted with the appeal.

(b) The award official will dismiss as untimely any protest appeals based upon alleged improprieties in the solicitation which were apparent before bid opening or the closing date for receipt of initial proposals if the initial protest was not received by the recipient before bid opening or the closing date for receipt of proposals respectively. In the case of negotiated procurements, protests of alleged improprieties which were incorporated in a new solicitation must have been received by the recipient not later than the next closing date for receipt of proposals.

(c) In cases not based upon alleged improprieties in solicitation, the award official will dismiss as untimely any appeals if the initial protest was not received by the recipient within one week after the basis for the protest was known or should have been known, whichever is earlier.

(d) The protester may notify the award official of a protest or appeal by brief telegraphic notice but the protester must provide the award official with a more detailed statement of the basis for the protest appeal within seven days after the date on the telegraphic notice.

(e) The award official will not consider oral protest appeals.

§ 33.1125 Appeal documents.

(a) The protest appeal document must state the legal and factual grounds for the appeal and request a determination under this subpart.

(b) Upon filing of a protest or appeal with the award official the protester

must concurrently transmit a copy of the documents and any attachments to all other parties with a direct financial interest which may be adversely affected by the determination of the protest. Also, a party which submits a document to the award official during the course of a protest appeal must simultaneously furnish all other affected parties with a copy of the document.

§ 33.1130 Deferral of procurement action.

(a) The recipient should review each protest filed with it to determine whether it is appropriate to defer the protested procurement action.

(b) When the award official receives a protest appeal, the award official must promptly request that the recipient defer the protested procurement action, if it has not already done so, until the award official notifies the recipient of the formal or informal resolution of the appeal. Such deferral of the procurement action shall be limited to the award of the subagreement, or subitem which is the basis of the protest.

(c) If the recipient does not defer the procurement action it bears the risk that the award official will disallow the cost of the protested procurement action if the protest appeal is upheld.

(d) If the protester does not agree to the recipient's request for a reasonable extension of the bid and bid bond period, the recipient or award official can summarily dismiss the protest appeal.

§ 33.1135 Award official's review.

(a) The award official will give both the recipient and the protester, as well as any other party with a financial interest which may be adversely affected by the determination of protest, an opportunity to present arguments in

support of their views in writing or at a conference.

(b) The award official shall review the record considered by the recipient, and any other documents or arguments presented by the parties, to determine whether the recipient has complied with the procurement requirements of this Part and has a rational basis for its determination of protest.

(c) After the award official's announced date for receipt of written arguments, the record shall be closed.

(d) The award official's determination shall constitute final EPA action, from which there shall be no further administrative appeal. No party may appeal an award official's determination of appeal to the EPA Board of Assistance Appeals.

(e) Nothing in this subpart precludes the award official from reviewing the recipient's procurement action. (See § 33.115.)

(f) Noncompliance with the award official's determination of protest shall be cause for enforcement action under 40 CFR Parts 30 and 32.

(g) If an appeal involves legal issues not explicitly addressed by this Part or State or local law, the award official shall resolve the issue by referring to other protest determinations under this section and decisions of the Comptroller General of the United States or of the Federal courts addressing Federal requirements comparable to procurement requirements of this Part.

Appendix A—Procedural Requirements for Recipients Who Do Not Certify Their Procurement System, or for Recipients Who Have Their Procurement Certification Revoked by EPA

(a) The following procedural requirements apply to recipients who:

(1) Do not certify to EPA that their procurement system meets the minimum procurement requirements in this Part, or

(2) Have their procurement certification revoked by the award official as stated in § 33.115(b).

(b) Those recipients must comply with the requirements in this Part, plus the following procedural requirements. These procedural requirements supplement the requirements in the sections cited.

(1) To comply with § 33.250, "Documentation," the recipient must submit to the award official the records required by this section.

(2) To comply with § 33.290, "Cost and price considerations," the recipient's contractors and subcontractors must submit their cost or price data of EPA Form 5700-41 "Cost or Price Summary Format for Subagreements Under U.S. EPA Grants," or on a form which contains information similar to that required by the EPA Form 5700-41.

(3) To comply with § 33.420, "Time for preparing bids," the recipient must generally allow at least 30 days between the date when it first publishes the public notice and the date by which bids must be submitted.

(4) To comply with § 33.415, "Public notice and solicitation of bids," when the estimated cost of construction is expected to exceed \$10 million, the recipient must generally publish the notice in trade journals of nationwide distribution for a least 30 days.

(5) To comply with § 33.510, "Adequate public notice," the recipient must generally publish the notice in professional journals, newspapers, or publications of general circulation over a reasonable area for at least 30 days. The recipient may use posted public notices or written notification directed to interested persons, firms or professional organizations.

[FR Doc. 82-12743 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[The page contains three columns of text that are extremely faint and illegible. The text appears to be a formal document or report, possibly from the early 20th century, given the style of the paper and the layout. The columns are separated by wide margins, and the text within each column is dense but cannot be transcribed due to its low contrast and blurriness.]

Registered Federal Paper

Wednesday
May 12, 1982

Part IV

Environmental Protection Agency

Approval of Arkansas and Louisiana Air
Quality Implementation Plans

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A-6-FRL 2078-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Arkansas Plan for Controlling Sulfuric Acid Mist From Existing Sulfuric Acid Production Facilities and Fluoride Emissions From Phosphate Fertilizer Plants; Louisiana Plan for Controlling Fluoride Emissions From Phosphate Fertilizer Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice, EPA approves the Arkansas plan for controlling sulfuric acid mist emissions from existing sulfuric acid production plants and fluoride emissions from existing phosphate fertilizer plants. The plan was submitted to fulfill the requirements of section 111(d) of the Clean Air Act, as amended in 1977 (the Act), and regulations promulgated thereunder. The plan was submitted as a part of the section 8.1 of the Regulations of the Arkansas Plan of Implementation for Air Pollution Control, entitled, "Designated Facilities." Also included in this final rulemaking, EPA approves the Louisiana plan for controlling fluoride emissions from the existing phosphate fertilizer plants. This plan was submitted as section 29 of the Louisiana Air Quality Control Regulations, entitled, "Fluoride Emission Standards for Phosphate Fertilizer Plants."

EFFECTIVE DATE: This action will be effective on July 12, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the States' submittals and incorporation by reference materials are available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Rm 8401, Washington, D.C.

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street SW., Rm 2922, Washington, D.C.

Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas

FOR FURTHER INFORMATION CONTACT: Estela S. Wackerbarth, Chief, Implementation Plan Section, Air

Program Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767-1518.

SUPPLEMENTARY INFORMATION:

A. Arkansas Plan

On July 11, 1979 the State of Arkansas, pursuant to Section 111(d) of the Act, submitted a plan identifying existing sulfuric acid production facilities and establishing standards for sulfuric acid mist emissions from those facilities. This plan also identified the existing phosphate fertilizer plant and established emission limits to control fluoride emissions from that plant. The plan was adopted by the Arkansas Commission on Pollution Control and Ecology on May 25, 1979, after public hearing on March 16, 1979.

EPA has reviewed these portions of the State's plan and found that they satisfy the criteria of 40 CFR Part 60, except that the plan does not indicate that alternative emission test methods and procedures must be approved by EPA, nor does it make provision for public availability of emission data. By letter dated August 6, 1981, the State has agreed that alternative test methods and procedures will be submitted for EPA approval. In its previous approval of the State's plan submitted under the provisions of section 110 (40 CFR 52.178) EPA provided for making emission data associated with that plan available to the public (40 FR 55328, Nov. 28, 1975). Since this is a similar action, and the State had adopted this 111(d) plan as part of its general State Implementation Plan, the method which EPA provided under section 110 applies here. The Agency is therefore clarifying that 40 CFR 52.178 (b) applies to the Arkansas section 111(d) plan. EPA approves the plan, as supplemented, in this action. A detailed analysis of the State's plan is contained in EPA's evaluation report.¹ General comments are included in Section C, below.

B. Louisiana Plan

(1) On July 18, 1978, the State of Louisiana, pursuant to section 111(d) of the Act, submitted a plan identifying the existing phosphate fertilizer plants and establishing emission limits to control fluoride emissions from those facilities. The plan was adopted by the Louisiana Air Control Commission on November 30, 1977, after a public hearing on

¹ Evaluation Report for Arkansas 111(d) Plan for Control of Sulfuric Acid Mist Emissions from Sulfuric Acid Plants and Fluoride Emissions from Phosphate Fertilizer Plants, October, 1981; available for public inspection at times and places noted above.

October 31, 1977. EPA has reviewed this portion of the State's section 111(d) plan and found that it satisfies the criteria of 40 CFR Part 60 except that it does not: (1) Provide for correlation of emission inventory data with the emission limits, (2) Make provision for public availability of emission data, or (3) Require EPA approval of alternative methods approved by the State's Technical Secretary. By letter dated February 16, 1982, the State shows that it requires EPA approval of alternative test methods. In its previous approval of the section 111(d) plan for control of sulfuric acid mist emissions (40 CFR 62.4622), EPA provided for correlation of inventory data with emission limits, and for making emission data available to the public (44 FR 54053, September 18, 1979). That provision applies by its terms to the entire plan, including the portion considered here. EPA approves the plan, as supplemented, in this action. A detailed analysis of the State's plan is contained in EPA's evaluation report.² General comments are in Section C, below.

(2) The effective date for this portion of the Louisiana plan is simultaneous with the effective date of this approval (July 12, 1982), unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

C. General

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of May 12, 1982. Under section 307(b)(2) of the Clean Air Act the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The Office of Management and Budget has exempted this rule from the

² Evaluation Report of Louisiana 111(d) Plan for Control of Fluoride Emissions from Phosphate Fertilizer Plants, September, 1981; available for public inspection at times and places noted above.

requirements of Section 3 of Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements.

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Clean Air Act, as amended)

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. Part 62 is amended by adding a new Subpart E to read as follows:

Subpart E—Arkansas

Plan for the Control of Designated Pollutants From Existing Facilities [§ 111(d) Plan]

Sec.

62.850 Identification of plan.

62.852 Emission inventories, source surveillance, reports.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

62.854 Identification of sources.

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

62.855 Identification of sources.

Authority: Sec. 111(d), Clean Air Act, as amended, 42 U.S.C. 7413 and 7601.

Subpart E—Arkansas

Plan for the Control of Designated Pollutants From Existing Facilities [§ 111(d) Plan]

§ 62.850 Identification of plan.

(a) Identification of plan: Arkansas Plan for the Control of Designated Pollutants from Existing Plants [Section 111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from sulfuric acid plants, and fluoride emissions from phosphate fertilizer plants, submitted on July 11, 1979, having been adopted by the State on May 25, 1979, and letter dated August 6, 1981.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric Acid Plants.

(2) Phosphate Fertilizer Plants.

§ 62.852 Emission inventories, source surveillance, reports.

(a) For purposes of this subpart, the terms "the applicable plan" and "the plan" in 40 CFR 52.178(b), which provides for public availability of emission data, include this plan.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.854 Identification of sources.

The plan applies to existing facilities at the following existing phosphate fertilizer plant:

(1) Allied Chemical Company at Helena, Arkansas.

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.855 Identification of sources.

(a) The plan applies to existing facilities at the following existing sulfuric acid plants:

(1) Olin Corporation in North Little Rock, Arkansas.

(2) The Monsanto Company in Eldorado, Arkansas.

§§ 62.856–62.869 [Reserved]

Subpart T—Louisiana

§ 62.4620 [Redesignated as § 62.4624]

2. In Subpart T—Louisiana, § 62.4620(c) in its entirety is redesignated as § 62.4624 and entitled "Identification of sources."

3. In Subpart T—Louisiana, the center heading that appears above § 62.4620 are revised to read as follows:

Plan for Control of Designated Pollutants From Existing Facilities [§ 111(d) Plan]

§ 62.4620 Identification of plan.

(a) Identification of plan: Louisiana Plan for Control of Designated Pollutants from Existing Facilities [111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from sulfuric acid plants, and fluoride emissions from existing facilities at phosphate fertilizer plants, submitted on July 18, 1978, having been adopted by the State November 30, 1977, and letter dated February 16, 1982.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric Acid Plants.

(2) Phosphate Fertilizer Plants.

4. In Subpart T—Louisiana, a new center heading is added above § 62.4624 and new §§ 62.4625 and 62.4626 are added to read as follows:

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

* * * * *

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.4625 Identification of sources.

(a) The Plan applies to existing facilities at the following phosphate fertilizer plants:

(1) Agrico Chemical Company at Donaldville, Louisiana.

(2) Allied Chemical Corporation at Geismar, Louisiana.

(3) Beker Industries at Taft, Louisiana.

(4) Freeport Chemical at Uncle Sam, Louisiana.

(5) Monsanto at Luling, Louisiana.

§ 62.4626 Effective date.

(a) The effective date of the portion of the plan applicable to phosphate fertilizer plants is July 12, 1982.

[FR Doc. 82-12889 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A-6-FRL-2092-8]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; Louisiana Plan for Controlling Fluoride Emissions From Primary Aluminum Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this notice, EPA approves the Louisiana plan for controlling fluoride emissions from existing primary aluminum plants. The plan substantially fulfills the requirements of section 111(d) of the Clean Air Act, as amended in 1977 (the Act), and regulations promulgated thereunder. This plan entitled, "The Louisiana State Implementation Plan for Fluorides From Existing Primary Aluminum Plants," includes regulations adopted as section 28 of the Louisiana Air Quality Control Regulations and when approved allows the State to control emissions from existing sources.

EFFECTIVE DATE: This approval will be effective on July 12, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State's submittals and incorporation by

reference materials are available for inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street NW., Washington, D.C., Rm. 8401

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C., Rm. 2922.

FOR FURTHER INFORMATION CONTACT:

Estela S. Wackerbarth, Chief, Implementation Plan Section, Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-1518.

SUPPLEMENTARY INFORMATION:

A. Louisiana Plan

(1) On January 12, 1981, the State of Louisiana, pursuant to Section 111(d) of the Act, submitted a plan identifying the existing primary aluminum plants and establishing standards to control fluoride emissions from those facilities. The plan was adopted by the Louisiana Environmental Control Commission on December 11, 1980, after a public hearing. The State submitted additional information in its letter of January 18, 1982. EPA has reviewed this portion of the State's plan and found that it satisfies the criteria of 40 CFR Part 60 except that it does not: (1) Provide for correlation of emission inventory data with the emission limits, (2) make provision for public availability of emission data, (3) establish an effective date and (4) provide for EPA approval of alternative test methods and procedures. In a previous approval of the Section 111(d) plan for sulfuric acid mist emissions (40 CFR 62.4622), EPA has provided for correlation of inventory data with emission limits, and for making emission data available to the public (44 FR 54053, September 18, 1979). That provision applies by its terms to the entire plan, including the portion considered here. The state did not submit compliance schedules, but, as required by 40 CFR 60.2(e) will develop and submit them after EPA approval of this plan. The State's plan refers to the EPA date of approval as the beginning of those compliance schedules. In this notice, EPA establishes as the effective date of the plan the effective date of this approval. That letter clarifying the portion of the plan applicable to phosphate fertilizer plants, already approved by EPA, provides for the State's submittal of alternative test methods and procedures to EPA for approval. The clarification applied by its terms to the portion of the plan

considered here. EPA approves the plan, as supplemented, in this notice.

A detailed analysis of the State's plan is contained in EPA's evaluation report.¹

(2) The effective date for this portion of the Louisiana plan is simultaneous with the effective date of this approval (July 12, 1982), unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

B. General

The public should be advised that this action will be effective 60 days from the date of this notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from this date). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Act, as amended)

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

¹ Evaluation Report of Louisiana 111(d) Plan for Control of Fluoride Emissions From Primary Aluminum Plants, January, 1982; available for public inspection at times and places noted above.

Subpart T—Louisiana

1. In Subpart T—Louisiana, § 62.4620 (b)(2) and (c)(3) are added to read as follows:

§ 62.4620 Identification of plan.

(b)(2) Control of fluoride emissions from existing facilities at primary aluminum plants, submitted on January 12, 1981, having been adopted by the State on December 11, 1980.

(c)(3) Primary Aluminum Plants.

2. In Subpart T—Louisiana, a new center heading and §§ 62.4627 and 62.4628 are added to read:

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.4627 Identification of sources.

The plan applies to existing facilities at the following primary aluminum plants:

(1) The Kaiser Plant at Chalmette, Louisiana.

(2) The CONALCO Plant at Lake Charles, Louisiana.

§ 62.4628 Effective date.

The effective date of this portion of the State's plan is July 12, 1982.

[FR Doc. 82-12870 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A-6-FRL-2098-5]

Approval and Promulgation of the Louisiana State Plan for a Designated Facility and Pollutant; Louisiana Plan for Controlling Total Reduced Sulfur Emissions From Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves Louisiana's Plan for controlling total reduced sulfur (TRS) emissions from existing kraft pulp mills. Louisiana's plan was submitted in response to the publication of emission control guidelines by the Administrator under section 111(d) of the Clean Air Act, as amended. The plan satisfies, with clarification, EPA's requirement for adoption and submittal of a plan to control TRS.

EFFECTIVE DATE: This action will be effective on July 12, 1982 unless notice is received within 30 days that someone

wishes to submit adverse or critical comments.

ADDRESS: Written comments should be addressed to Estela Wackerbarth, Chief, SIP Section, Region 6, Air Program Branch (address below). Copies of the materials submitted by Louisiana may be examined during normal business hours at the following locations:

Public Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 "M" Street SW., Washington, D.C. 20460

Air Program Branch, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT:

Estela Wackerbarth at the EPA Region 6 address above or call (214) 767-1518 (FTS 729-1518).

SUPPLEMENTARY INFORMATION: On December 10, 1979, the Governor of Louisiana, after adequate notice and public hearing, submitted the State's plan for controlling total reduced sulfur emissions from existing kraft pulp mills. This plan was adopted by the Louisiana Air Control Commission on November 27, 1979. The State has adopted this plan to establish emission limitation for TRS from the pulp paper industry. The limitations are included in revisions to their Regulation 23.0 Control of Emissions from the Chemical Wood Pulp Industry for Control of Total Reduced Sulfur Emissions and submitted part of the overall plan.

EPA has reviewed this plan and after correspondence and discussion with the State finds it approvable. A detailed analysis of this plan is contained in EPA's evaluation report. A copy of the evaluation report is available for inspection at the above addresses.

As submitted, the plan did not adequately demonstrate that the State had the requisite authority to disclose emission data to the public upon the public's request. However, EPA approved Louisiana's original 111(d) plan at 40 CFR 62.4622(c) thereby assuring public disclosure. This provision is appropriate for use in

disclosing emission data from sources covered by this TRS plan.

The Plan does not establish compliance schedules. However, the plan assures that public hearings will be held in accordance with the requirements of 40 CFR 60.24(e)(2) if a compliance schedule becomes necessary.

Since EPA views this plan as noncontroversial and routine, EPA is today approving the Louisiana plan for control of TRS from kraft pulp mills. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Clean Air Act, as amended, 42 U.S.C. 7411(d))

Dated: April 30, 1982.

Anne M. Gorsuch,
Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart T—Louisiana

1. In Subpart T—Louisiana, § 62.4620 (b)(3) and (c)(4) are added to read as follows:

§ 62.4620 Identification of plan.

(b)(3) Control of total reduced sulfur from existing facilities at kraft pulp mill plants, submitted in December 1979, having been adopted November 27, 1979, and letter dated February 16, 1982.

(c)(4) Kraft Pulp Mills.

2. In Subpart T—Louisiana, a new center head and § 62.4629 and § 62.4630 are added to read:

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.4629 Identification of sources.

The plan applies to existing facilities at the following kraft pulp mill plants:

- (1) Boise at DeRidder, La.
- (2) Boise at Elizabeth, La.
- (3) Continental at Hodge, La.
- (4) Crown-Zellerbach at Bogalusa, La.
- (5) Crown-Zellerbach at St. Francisville, La.
- (6) Georgia-Pacific at Port Hudson, La.
- (7) International Paper at Bastrop, La.
- (8) Olinkraft at West Monroe, La.
- (9) Pineville Kraft at Pineville, La.
- (10) Western Kraft at Compté, La.

§ 62.4630 Effective date.

The effective date of the portion of the plan applicable to kraft pulp mills is July 12, 1982.

[FR Doc. 82-12871 Filed 5-11-82; 8:45 am]

BILLING CODE 6560-50-M

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. The text is organized into several columns and appears to be a formal document or report.]

Federal Register

**Wednesday
May 12, 1982**

Part V

Department of Commerce

**National Oceanic and Atmospheric
Administration**

Transfer of Marine Mammal Management Authority to States; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing of Marine Mammals; Transfer of Marine Mammal Management Authority to States

AGENCY: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is proposing a rule to implement recent amendments to the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* The proposed regulations establish procedures for the transfer of marine mammal management authority back to the states, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return to the NMFS of management authority once transferred to the states.

DATE: Comments on this proposal must be submitted on or before July 12, 1982.

ADDRESS: Interested persons or organizations are requested to submit comments to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, (202) 634-7461.

SUPPLEMENTARY INFORMATION: On October 9, 1981, the President approved Pub. L. 97-58 amending various provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* One aspect of these amendments altered the mechanism for the return of marine mammal management to the states under section 109 of the Act, 16 U.S.C. 1379. Under the pre-existing statutory procedures, states were required to request the National Marine Fisheries Service to return management of the species. If a state sought authority to allow taking of the marine mammals under its management, the state was required to request the NMFS to waive the moratorium on the taking of the species. This request required a formal Federal hearing before an

Administrative Law Judge concerning the status of the requested species, and the permissible number of animals to be taken, as well as consideration of the state's proposed laws and regulations that would govern the taking of the species. The proposed waiver of the moratorium to allow taking of the species also required compliance with the provisions of the National Environmental Policy Act. In reviewing these procedures, Congress found that the lengthy process entailed in the return of management authority to states had resulted in a situation in which the goal of the Act—effective management to maintain healthy populations of marine mammals—was being impaired.

To remedy this problem, Congress established a simplified procedure under which a state could resume management of marine mammal species. This procedure entails a three step process. First, the state must submit a request to the NMFS for return of management authority for a given species or a number of species of marine mammals. This request and its supporting documentation is reviewed by the NMFS to determine if the state has developed and will implement a program for the conservation of the species which meets certain requirements set forth in the Act. Second, if the NMFS finds that the state program meets this initial requirement, the state must make a determination, under procedures set by the Act, of the optimum sustainable population ("OSP") of the species and the maximum allowable take of the species which is consistent with maintaining the species at OSP. Third, these determinations must be implemented through state laws and regulations and, if the range of the species extends beyond the territorial water of the state, the state and Federal governments must agree on a process for allocating the take of the species between areas under respective state and Federal jurisdictions. Once this "cooperative allocation agreement" has been signed and implemented and the OSP and maximum allowable take determinations are final and implemented under state law, the state will have exclusive authority to manage marine mammals within the state, including its territorial waters. The only exceptions to this assumption of exclusive jurisdiction would be for takings regulated by the Federal government and takings by non-state personnel for scientific and display purposes, activities which remain under the control of the Federal government pursuant to section 109 of the Act.

The regulations proposed herein will implement the statutory procedures for

return of marine mammal management authority to the states. These regulations apply to the species of marine mammals currently managed by the NMFS, under the authority of the MMPA. These species include the seals, sea lions, porpoises and whales. Other species of marine mammals, including the polar bear, sea otter, walrus, dugong, manatee and marine otter are managed by the Fish and Wildlife Service of the Department of the Interior which is proposing corresponding regulations concurrent with this proposal. Specific provisions of the NMFS proposed regulations are discussed below.

Section 216.101

Paragraph (a) of this section establishes the purpose of the regulations as explained above and defines the scope of the proposed regulations. Section 216.102 is definitional. The form and minimum requirements of a state application for transfer of management authority are set forth in §§ 216.103 and 216.104. The relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority is defined in §§ 216.103(h), 216.105, and 216.106. The revocation and return of management authority is governed by § 216.107. In addition, § 216.108 will list species for which management authority has been returned.

Paragraph (b) of this section excludes certain aspects of marine mammal management authority from that affected by the proposed regulations. Taking of marine mammals by Federal, state and local government officials in the course of their duties is governed by § 216.22 of this Part and, therefore, the notification requirements of that section remain in effect. Section 216.22 relates to the taking of stranded and beached marine mammals and the taking of marine mammals for the protection of public health and welfare. In addition, since the Act does not regulate disposition of marine mammals taken before its effective date, December 21, 1972, these regulations reflect that exception. (Section 216.14 of this part does impose certain notification requirements pertaining to marine mammals taken before December 21, 1972). Accordingly, a state may adopt and enforce any state law relating to any marine mammal taken before that date without requesting a return of management authority under these regulations.

Section 216.102

This section provides definitions for several terms used primarily in this subpart. These regulations, however, apply to the entire Part 216. "Optimum Sustainable Population" or "OSP" is defined in 50 CFR 216.3. Congress has specifically found that this definition accurately reflects the meaning of the term and the intent of Congress in passing the Act. H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 16 (1981). It is important to note that OSP is any population level within a range of population levels. The upper bound of the range is the largest average supportable level within the ecosystem (carrying capacity). The lower bound of the range is the population level for a given species or stock that results in maximum net productivity.

This section also defines "state management program." The state management program consists of the legal framework under which the state will manage marine mammals. Components of this framework which are specifically required to be submitted in the state's request for return of management authority are set forth in paragraphs (b) and (c) of § 216.103 of the proposed regulations. Paragraph (d) of § 216.103 lists additional components required only in the state of Alaska's management program.

Section 216.103

This section defines the form and minimum requirements of a state request for return of management authority. Any state requesting management authority from both the NMFS and the Fish and Wildlife Service may combine the request in a single document and send copies to both agencies. The request must contain two elements: Certain aspects of the proposed state management program and supplemental information pertaining to the state management program. The request must include the text of relevant laws, regulations, policies and other authorities of state law, and a narrative discussion of how these authorities blend to form a framework that meets the new requirements of the Act.

It is important to note that although the state management program is defined broadly by § 216.102, the request for transfer of management authority need not include all aspects of the state management program. Therefore, the state need not provide specific laws or regulations pertaining to the manner, times or amount of take, unless specifically required by § 216.103. Thus, the state need not submit as part of its

request regulations pertaining to such aspects of take as bag limits, seasons, or the minimum rifles caliber that can be used in taking the species. However, the request must include, for example, a law or regulation that requires taking to be humane (see § 216.103(b)(2)(i), even though this is a restriction on the manner of taking, since it is specifically required by the Act.

If any necessary aspect of state law has yet to be enacted, proposed language or a commitment of intention to introduce legislation or adopt regulations must be submitted by the governor. The Act requires the Assistant Administrator for Fisheries to find that the State "has developed and will implement" a program for the conservation of the species before management authority can be transferred. This finding can be made for some aspects of the state management program (e.g., those required to be provided by § 216.103(b)(2)(v), (b)(3), (b)(5), (b)(6)(ii) and (d)(2)) even though only proposed language or a commitment of intention is submitted. Thus, submittal of these aspects of the state management program in pre-adoption form will not preclude review and approval of the state management program. However, the failure to enact a provision substantially as proposed can be grounds for revocation of management authority pursuant to § 216.107.

It should also be noted that if a state has been transferred management authority and that authority has been returned to, or revoked by, the Assistant Administrator for Fisheries pursuant to § 216.107 of the proposed regulations, the state may, at a later date, request the transfer of management authority by complying with § 216.103 of the proposed regulations.

Paragraph (b) of this section lists those components of the state management program which must be submitted in the request for a return of management authority. In the case of Alaska, only, paragraph (d) lists additional mandatory components relating to subsistence uses of marine mammals. These requirements are considered to be the minimum necessary to enable the Assistant Administrator for Fisheries to make the determination, required by section 109(b)(1)(A) of the Act, on whether the state program "is consistent with the purpose, policies and goals of (the) Act and with international treaty obligations."

Section 216.103(b)(1) requires the state to list the scientific and common names and estimated range of the species of marine mammals for which it seeks

management authority. A state may request the transfer of management for more than one species. If this is the case, those components of the state management program that apply to more than one species do not need to be repeated for each species. Rather, the state should list the species and the components of the state management program that apply to some or all of the species. Those components of the state management program that apply to individual species should be so designated. The state should discuss which components apply generally and which apply specifically in the narrative discussion required by § 216.103(a)(2).

Paragraphs (b)(2)(i) through (b)(2)(v) and paragraph (d)(1) of this section are taken directly from section 109 of the Act and therefore require little additional explanation. A few points should, however, be noted.

First, a state to which management authority has been transferred for a given species is required to regulate the taking of that species so as to prevent its population from declining below its OSP. However, the Act provides that in the case of Alaska, subsistence taking may be allowed even if the species is below its OSP, as long as the amount of subsistence take will nevertheless permit the species to increase toward its OSP. Paragraphs (b)(2)(iii) and (d)(1) of this section reflect this distinction.

Second, in accordance with the Act, paragraph (b)(2)(iv) requires the state to prohibit, with the exceptions noted below, take for scientific and display purposes. With the exception of take for scientific and display purposes done by or on behalf of the state, management of this take is retained by the NMFS. However, Federal regulation of take for scientific and display purposes will be consistent with state management as provided by § 216.105(c) of the proposed regulations.

Third, paragraph (b)(2)(v) requires the state to regulate the incidental taking of the species in a manner consistent with the Act and any Federal regulation of incidental taking. While the state regulations need to be consistent with the Federal regulations, they need not be identical.

Paragraph (b)(3) of this section requires that the state program contain procedures for acquiring and evaluating data relating to OSP and the maximum allowable take of the species. This review need not comply with § 216.104 procedures pertaining to determining OSP and the maximum allowable take of the species. However, if the review, which should be done at least annually, discloses that OSP and maximum

allowable take determinations may need to be adjusted, the state must use those procedures required by § 216.104 in making these adjustments.

Paragraph (b)(6) of this section lists certain aspects of the state management program which must be considered by the Assistant Administrator for Fisheries in making a determination as to whether the state's program is consistent with the Act.

The description of the organization of state offices involved in the administration and enforcement of the state management program need describe only the various responsibilities of these offices as they relate to marine mammal management and how these offices relate to one another. In the latter regard, an organizational chart would be helpful.

Paragraph (b)(6)(ii) relates to permits involving marine mammals. The state should describe what types of permits apply to actions involving marine mammals, the laws under which such permits are granted, and what factors guide discretion on permit applications.

The state should discuss, pursuant to paragraph (b)(6)(iii), certain aspects of judicial review such as the courts which have jurisdiction to review administrative decisions, who may challenge administrative decisions, the scope of judicial review, and the range of available remedies.

The state should discuss, pursuant to paragraph (b)(6)(iv), such aspects of administrative rulemaking as notice procedures, public comment requirements, ex parte rules and hearing requirements.

Although paragraphs (b)(6)(ii) through (b)(6)(iv) pertain to state laws on specific aspects of marine mammal management, copies of these laws do not need to be included with those provided pursuant to § 216.103(a)(1). A general description of the provisions, limitations and exceptions of these laws will be sufficient.

Paragraph 216.103(c) requires the state to submit in its request for the transfer of management authority certain supplementary information pertaining to the state management program. This information need only be submitted in summary form. It is believed that compiling the information in this form will not unduly burden the state, yet will provide the Assistant Administrator for Fisheries a baseline from which to evaluate the subsequent administration of marine mammal management by the state.

Section 109(f)(1)(B) of the Act requires Alaska to provide economic opportunities to resident subsistence users of rural coastal village in the event

non-subsistence consumptive uses of marine mammals will be allowed. Section 216.103(d)(2) of the proposed regulations require Alaska to describe the types of economic opportunities to be provided in this event. Alaska need not specify which types of economic opportunities would be available in specific cases. Instead, the state should describe the procedures to be used in deciding (a) when these opportunities will be made available, (b) the extent to which they will be made available, and (c) to whom they will be made available. Section 216.03(d) applies to the state of Alaska, only, and may be disregarded by other state applicants.

Paragraphs (e) through (h) of § 216.103 provide procedures for the Assistant Administrator's review of a request for return of management authority. The preliminary review procedures of paragraph (e) are not designed as a mechanism for piecemeal review of the state's management program. This subsection can be used either to gain guidance on an entire program before formal submission, or as a means of evaluating proposed aspects of the state management program before final enactment and submission. Furthermore, pursuant to section 109(b)(2) of the Act, 16 U.S.C. 1379(b)(2), the state may not manage marine mammals even though the Assistant Administrator for Fisheries has approved its management program, until the events listed in § 216.103(h) of these regulations have occurred. When the Assistant Administrator for Fisheries finds that the state's OSP and maximum allowable take determinations are final and implemented under state law, and a cooperative allocation agreement, if necessary, has been implemented, a notice will be published in the *Federal Register* formally transferring management authority. The state can begin management at that time.

Section 216.104

This section describes procedures which the state must provide for in its management program and employ in determining the OSP of a given species and the maximum allowable number of animals that can be taken without reducing the population below OSP. These procedures are required by section 109(c)(2) of the Act, 16 U.S.C. 1379(c)(2).

The OSP and maximum allowable take determination process is composed of three steps. First, pursuant to paragraph (c) of this section, the state must make an initial determination regarding OSP and maximum allowable take. Second, pursuant to paragraph (d), the state must provide public notice of

its initial determinations. The state must make copies of its initial determinations and supporting documentation available for public inspection and must provide a reasonable time in which a request for a public hearing can be made.

The third step is finalization of the determinations. If no request for a public hearing is made within the prescribed time period, the initial determinations become final. If, on the other hand, a request for a public hearing is made, the determinations do not become final until the state has complied with the procedures of paragraphs (e) through (g) of this section.

Paragraph (e) requires public notice of the state hearing. This notice must include certain information including the State's initial determinations, the date(s), location(s) and purpose of the hearing, the name(s) of person(s) who will preside at the hearing and information on how interested persons can participate in the hearing. The state must also make available a description of the documentation and the witnesses upon which it will rely in the hearing. This information must be made available sufficiently in advance of the hearing to allow preparation by interested parties of supporting or rebuttal testimony.

Paragraph (f) describes procedures which must be employed in the hearing itself. The hearing must be transcribed verbatim. In accordance with the Act, final determinations must be based on the best available scientific information. This information must be of sufficient quantity and quality to ensure that any taking will be consistent with the maintenance of OSP. See *Committee for Humane Legislation v. Richardson*, 44 F. Supp. 297 (D.D.C. 1976), *aff'd* 540 F.2d 1141 (D.C. Cir. 1976). In the case of Alaska when the species is below OSP, maintenance of OSP includes the amount of subsistence take which will allow the species to increase toward OSP. In the recent amendments to the MMPA, Congress specifically overruled the decision of the U.S. District Court in *People of Togiak v. United States*, 470 F. Supp. 423 (D.D.C. 1979), which had exempted Alaska natives from state management. Amended section 101(b) now allows state management of subsistence taken by Alaska natives under Section 109. Moreover, 101(b) now restricts the Alaska native definition to those natives who reside in Alaska. Interested persons must be afforded the opportunity to participate in the hearing to the extent specified in paragraph (f)(3). Other aspects of hearing procedures are left to the discretion of

the presiding officer(s) in accordance with state law.

Paragraph (g) implements the Act's procedures for review of the hearing record. The state may employ any one of three methods for reviewing the record and making the final determinations based on that record. Independent of which method is used, the final determinations must be based only on information contained in the record of the public hearing. Once the final determinations are made, the state must develop a supporting decision document. This document must contain a statement of these determinations including findings and conclusions on all material issues and the reasons and basis therefor. This decision documentation must be made available to the Assistant Administrator for Fisheries and the public.

Finally, paragraph (h) of this section prescribes the parameters for judicial review of the final OSP and maximum take determinations.

The procedures required by § 216.104 apply only to OSP and maximum allowable take determinations. However, in the case of Alaska when the species is below OSP, the Act provides that subsistence take may be allowed only to the extent that the take will nevertheless allow the species to increase toward OSP. Since the maximum extent of subsistence take is subject to and must be based upon the OSP determination, the maximum allowable extent of subsistence take must also be determined in the same process. However, the extent of subsistence take that will actually be permitted within the maximum amount need not be determined through § 216.104 procedures.

If the species is at or above OSP, the state need not employ § 216.104 procedures to determine such regulatory controls on take as bag limits and quotas within the maximum biologically allowable take. Correspondingly, changes in bag limits, quotas and other similar regulatory controls on take can be made at any time through applicable state rulemaking procedures as long as the amount of take does not exceed the maximum allowable level of take as determined through § 216.104 procedures.

Section 216.105

This section describes federal and state responsibilities after transfer of management authority. Paragraph (a) describes the cooperative allocation agreement. In the case of a species whose range extends beyond the territorial water of the state, this agreement is actually a prerequisite to

the transfer of management authority. Once implemented, it describes the jurisdictional relationship between the Federal and state government after transfer. The purpose of the agreement is to provide procedures to allocate between the Fishery Conservation Zone (FCZ) under Federal jurisdiction and lands and waters under state jurisdiction the maximum allowable take which the state has determined pursuant to § 216.104. It is anticipated that after the state has made its determination as to maximum allowable take, the NMFS will provide its judgment as to the number of animals, if any, that will be taken in the FCZ. The state will compare this number to its determination of maximum take, and, in the case of Alaska, that necessary for subsistence use. The state and the NMFS will then agree, employing the procedures required by § 216.103(b)(4), if necessary, on allocation of the species for these purposes.

Pursuant to paragraph (b) of this section, once a state has management authority returned, it can request the Assistant Administrator for Fisheries to regulate hunting and subsistence take of the species within the FCZ in a manner consistent with state regulations of such take. The Assistant Administrator for Fisheries shall adopt, after notice and comment procedures, those state regulatory provisions that are found to be consistent with the administration of section 101(a) of the Act, 16 U.S.C. 1371(a), within the FCZ. This process was established by section 109(d)(2) of the Act as a mechanism for the Federal adoption of state regulations in areas beyond state territorial waters. H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 26 (1981).

In accordance with the terms of the Act, the NMFS remains responsible for regulating the take of marine mammals for scientific and public display purposes despite transfer of management authority to the state. Pursuant to the Act, and paragraph (C) of § 216.105 of the proposed regulations, the state is granted the opportunity to review applications for such take for consistency with the state's management of the species. Under the provisions of this subsection, the Assistant Administrator for Fisheries will notify the state upon receipt of an application to remove live animals from the wild within the state for scientific research or public display purposes. The state has 30 days in which to review the application. If the state finds that the permit would not be consistent with its management of the species and so notifies the Assistant Administrator for Fisheries, the Assistant Administrator

would not issue the permit. However, the Assistant Administrator will provide to the state and the applicant an opportunity, through consultations or other appropriate mechanisms, to adjust the permit application so that it is consistent with the state's management program.

Paragraph (d) of § 216.105 encourages the state and the NMFS to cooperate, to the maximum extent practicable, in conserving the species of marine mammals. This may include cooperation in research, enforcement and other aspects of marine mammal management. It is believed that such cooperative activities can provide the optimum utilization of the resources, personnel, expertise, knowledge and experience of both state and Federal wildlife agencies.

Section 216.106

This section provides procedures for the monitoring and review of the state management program. Under section 109(e) of the Act, 16 U.S.C. 1379(e), the Assistant Administrator for Fisheries has responsibility, after management authority has been returned to the state, to monitor the state's implementation of its program. To facilitate this review process, the state is required to submit an annual report pursuant to paragraph (b) on its management of the species, and report pursuant to paragraph (c) whenever either of the two events listed in that subsection occur.

Paragraph (b) defines the components of the annual report. Any changes in the state laws of regulations provided in the original request pursuant to § 216.103(b) and, in the case of Alaska, § 216.103(d) must be described in the annual report. The report should include a discussion of how such changes affect implementation of the management program. However, the extent of each discussion should be proportional to the importance of that change. For example, a change in rulemaking procedures § 216.103(b)(6)(iv) will require less attention than a change in laws originally provided, pursuant to § 216.103(b)(2), concerning the take of the species.

Other than paragraph (b)(1), all other categories of information are limited by qualifiers such as "pertinent" and "significant" or simply seek information in summary form. Thus, the information provided need not be exhaustive, but should be sufficiently detailed and complete to provide the Assistant Administrator for Fisheries with a fair assessment of the administration of the state management program.

Paragraph (c) of this section requires the state to report the occurrence of either of two specified events. These events concern either the very foundation of the state management program or the status of the species involved and, therefore, require immediate review by the Assistant Administrator for Fisheries.

The report should describe the event and how it affects marine mammal management. The extent of discussion should correspond to the magnitude of the problem for either the state management program or the species. For example, a change in regulatory procedures for acquiring and evaluating data relating to OSP (§ 216.103(b)(3)) would in most cases require less discussion than a statutory or regulatory amendment allowing take in excess of the maximum allowable take determined pursuant to § 216.104 (§ 216.103(b)(2)(iii)).

Paragraph (d) of § 216.106 provides that all components of the state management program as well as annual reports submitted pursuant to § 216.106(b) and any reports submitted pursuant to § 216.106(c) will be available for inspection and copying at the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

Section 216.107

This section provides procedures and standards for the Assistant Administrator's review of state management of a species of marine mammals. In addition, this section provides procedures for the voluntary return of management to the Assistant Administrator by the state.

The Assistant Administrator's direct review of state management begins upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented inconsistent with the Act, the regulations of this subpart or the state's request for return of management authority.

Upon receipt of any such information, the Assistant Administrator for Fisheries will make a determination on whether or not the state has continued to comply with the Act, the regulations of Subpart H of Part 216 and the state's request for return of management authority. If the Assistant Administrator determines that the state is no longer in compliance, the state will be informed of the Assistant Administrator's intent to revoke management authority and the basis for this determination. The Assistant Administrator will also

publish in the **Federal Register** a notice of the intent to revoke management authority. A public hearing will be held if requested by the state or otherwise determined by the Assistant Administrator to be necessary. The state will be provided an opportunity to consult on the deficiencies in state management which caused the Assistant Administrator's determination and the necessary remedial measures. If the state fails to take the necessary remedial measures within 90 days of the notice of intent to revoke provided by the Assistant Administrator, the Assistant Administrator shall revoke management. The Assistant Administrator will then manage the concerned species in accordance with the Act and the regulations of Part 216.

Paragraph (b) of this section provides procedures for the voluntary return of management authority to the Assistant Administrator for Fisheries by the State. The state need only notify the Assistant Administrator of its intent to return management. Unless the Assistant Administrator determines that an emergency exists which requires immediate assumption of management authority, the Assistant Administrator will publish a Notice in the **Federal Register** between 30 and 60 days after receiving notice from the state. This notice will act as the formal assumption of management authority by the Assistant Administrator. As with the revocation of management authority, the Assistant Administrator will then manage the concerned species of marine mammals pursuant to the Act and the regulations of Part 216.

Paragraph (b)(2) of this section provides procedures to be followed in the event that the implementation of any aspect of the state management program is enjoined by court order. Within 30 days of the injunction, the state is to evaluate the effect of the injunction on state management of the species and notify the Assistant Administrator. If the state determines that the injunction precludes effective conservation of the species under the management program, the notice is treated as a notice of intent to return management pursuant to § 216.107(b)(1). If the state determines that the injunction does not preclude effective conservation of the species, the notice is treated as a report submitted pursuant to § 216.106 (c)(1) and reviewed pursuant to § 216.107(a).

Section 216.108

This section provides notification of the states to which management have been returned. Accordingly, it will be updated from time to time when

management has been returned to a new state or for a new species.

Applicability to Other Laws, Regulations and Requirements

An environmental assessment has been prepared in conjunction with these proposed regulations. It is available from the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235. Based on the environmental assessment, the Assistant Administrator for Fisheries has determined that the proposed rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c).

The proposed rulemaking is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices to consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The NMFS has determined, therefore, that the proposed regulations will not constitute a major rule and require no regulatory impact analysis under Executive Order 12291.

The General Counsel of the Department of Commerce has certified that the proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Since the number of applicants for a return of marine mammal management authority, under the proposed regulations, is expected to be less than ten, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 50 CFR Part 216

Endangered and threatened wildlife, Imports, Marine mammals, Penalties.

Proposal of Regulation

Accordingly, it is hereby proposed to amend 50 CFR Part 216, by revising Subpart H to read as follows:

Subpart H—Transfer of Management Authority to States

- Sec.
- 216.101 Purpose and scope of regulations.
 - 216.102 Definitions.
 - 216.103 Review and approval of State request for management authority.
 - 216.104 Determinations and hearings under Section 109 (c)(2).

Sec.

- 216.105 State and Federal responsibilities after transfer of management authority.
- 216.106 Monitoring and review of State management program.
- 216.107 Revocation and return of State management.
- 216.108 List of States to which management has been transferred.

Subpart H—Transfer of Management Authority to States

§ 216.101 Purpose and scope of regulations.

The regulations contained in this subpart implement section 109 of the Act which provides for the transfer of marine mammal management authority to the States.

(a) The regulations of this subpart apply to the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority back to the States.

(b) Nothing in this subpart shall prevent (1) the taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with § 216.22 of this part, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

§ 216.102 Definitions.

The following definitions apply to this part.

(a) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(b) "State management program" means existing and proposed state laws, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(c) "State regulation" means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law

or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

§ 216.103 Review and approval of State request for management authority.

(a) Any state may request the transfer of marine mammal management authority for a species of marine mammals by submitting a written request to the Assistant Administrator for Fisheries. The request must include:

(1) Copies of existing and proposed laws, regulations, policies and other authorities of state law which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d)(1) of this section;

(2) A narrative discussion of the laws, regulations, policies and other authorities which comprise those aspects of the state management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this subpart; and

(3) Supplementary information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the state management program.

(2) Provisions concerning the take of marine mammals that

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Prohibit the taking of marine mammals until the following have occurred:

(A) The state, pursuant to the requirements of § 216.104 of this subpart, has determined that the species is at its Optimum Sustainable Population (OSP) and the maximum number of animals that may be taken without reducing the species below its OSP, and, in the case of Alaska, the maximum numbers that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under state law; and

(C) A cooperative allocation agreement, if required under § 216.105(a) of this subpart, is implemented;

(iii) Prohibit take in excess of the maximum number of animals that may be taken as determined pursuant to

§ 216.104 of this subpart; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d)(1)(iv) of this section;

(iv) Prohibit take that is for scientific or public display purposes except such take by or on behalf of the state, or pursuant to a Federal permit issued under § 216.31 of this part; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act and Federal regulation, if any.

(3) Procedures for acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if required on the basis of such evaluation, for amending determinations as to OSP and maximum take and restricting take accordingly.

(4) Procedures for the resolution of differences between the state and the NMFS that might arise during the development of a cooperative allocation agreement pursuant to § 216.105(a) of this subpart.

(5) Procedures for the submission of an annual report meeting the requirements of § 216.106(b) of this subpart to the NMFS regarding the administration of the state management program during the reporting period.

(6) A description of—

(i) The organization of state offices involved in the administration and enforcement of the state management program;

(ii) Any permit system relating to the marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws and procedures relating to judicial review of administrative decisions as they relate to the state management program;

(iv) State laws and procedures relating to administrative rulemaking as they relate to the state management program;

(c) In addition to the aspects of the state management program required to be submitted by paragraph (b) of this section, the state shall submit information, in summary form, relating to

(1) The anticipated staffing and funding of state offices involved in the administration and enforcement of the state management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other materials and information as the Director may request or which the state may deem necessary

or advisable to demonstrate the compatibility of the state management program with the policy and purposes of the Act and the rules and regulations issued under the Act.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following:

(1) Provisions concerning the take of marine mammals that provide for subsistence use of the species as defined in section 109(f)(2) of the Act by rural Alaska residents in the following manner:

(i) Subsistence uses are to be the priority consumptive use of the species;

(ii) Non-subsistence consumptive uses are to be authorized only if the appropriate state agency finds, on the basis of the administrative record for the rule authorizing non-subsistence consumptive use, that such non-subsistence consumptive use will have no significant adverse impact upon subsistence uses of the species and the regulation of non-subsistence consumptive use will, to the maximum extent practicable, provide economic opportunities for the resident subsistence users of the rural coastal villages in Alaska;

(iii) Subsistence use is to be accomplished in a non-wasteful manner;

(iv) If the species is below OSP, subsistence use is to be allowed at a level of take, if any, which will permit the species to increase toward OSP; and

(v) If restriction of subsistence uses is required, restriction is to be based upon the customary and direct dependence upon the species as a mainstay of livelihood, local residency, and the availability of alternative resources.

(2) A description of the types of economic opportunities to be provided to resident subsistence users pursuant to section 109(f)(2)(B)(ii) of the Act and the procedures to be used in providing these economic opportunities.

(e) To assist states in preparing the state management program for submission, the Assistant Administrator will also, at the written request of any state, make a preliminary review of any aspects of the state management program. This review will be advisory in nature and shall not be binding upon the Assistant Administrator.

Notwithstanding preliminary review by the Assistant Administrator, once any proposed aspects of the state management program have been prepared and submitted in final form, they shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f) Upon receipt of a request submitted in accordance with paragraph (a) of this section, the Assistant Administrator will publish in the *Federal Register* a notice stating that the state management program under review will be available for inspection at the locations stated in the notice and providing information on how copies may be obtained. The notice will also provide that written data, views, comments, or requests for an informal public hearing on the state management program may be submitted to the Assistant Administrator within the time specified in the notice.

(g) The Assistant Administrator shall approve the request for transfer of management if, after consideration of the materials provided pursuant to this section and public comment received on such material, he determines that the state has developed and will implement a program for the conservation of species that is consistent with the provisions, purposes, policies and goals of the Act, international treaty obligations and the regulations of this part.

(h) Notwithstanding the provisions of paragraph (g) of this section, the state may not exercise management authority, which is retained by the Assistant Administrator, until such time as the determinations required by § 216.104 of this part are final and implemented under state law, and, if a cooperative allocation agreement for the species is required under § 216.105(a) of this part, such agreement is implemented. At such time of final implementation, the Assistant Administrator shall publish in the *Federal Register* a notice transferring management of the species to the state.

§ 216.104 Determinations and hearings under section 109(c)(2).

(a) *Introduction.* In order to gain approval of its marine mammal management program the state must provide for a process, consistent with Section 109(c)(2) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from species it manages. The state process must be completed before the state may exercise any management authority over the subject marine mammals and it must include the elements set forth below.

(b) *Basis, Purpose, and Scope.* The process set forth in this section is applicable to and required for only the determination of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for

subsistence uses without preventing the species from increasing toward its OSP. The state need not allow the maximum take as determined in accordance with this process that is biologically permissible. The state may change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the state proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial Determination by the State.* The state agency with management authority for the species shall make initial determinations on the basis of the best scientific evidence available of (1) whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and Review of Initial Determinations and Request for Hearing.* The state agency shall provide notice of its initial determinations to the Assistant Administrator and the public and shall provide access to or copies of the documentation supporting its determinations to the Assistant Administrator and the public. The state agency shall indicate in the Notice of its initial determinations the location(s) and hours during which such documentation may be inspected and the costs, if any, of copies of such documentation. The state agency shall also indicate in the Notice that any interested person may request a hearing regarding the initial determinations and the state shall provide a reasonable time for the request of not less than 30 days, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of Hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the state agency shall provide notice of the hearing to the Assistant Administrator and the public not less than 30 days in advance of the scheduled date(s). The notice shall

include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the state agency or presiding officer(s) of their desire to participate in the hearing. The state shall also make available and distribute upon request a list of witnesses and a description of the documentation and other evidence that will be relied upon by the state's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the Hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The state shall sponsor all written documentation in support of its determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the state agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the state agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining the witnesses of other parties with respect to matters relevant to the state's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the uses specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the Hearing Record and Final Determinations.* (1) The state agency may provide for either (i) review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determination to the decision-maker(s) in the state agency; or (ii) review and evaluation of the hearing record, and final determinations by the presiding officer(s); or (iii) review and evaluation of the hearing record and final determinations by the state agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the state agency and/or the presiding officer(s) must be made solely on the basis of the record developed at the hearing. The state agency may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information transmitted to the presiding officer(s) or other members of the state agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The state agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The state agency shall advise the Assistant Administrator and the public of its final determinations and shall provide access to or copies of its decision document.

(h) *Judicial Review.* The state agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the state agency's final determinations must be available under state law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706(2) (A) through (E).

§ 216.105 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by § 216.104 of this subpart have been made in respect to a species whose range extends beyond the territorial waters of the state, the state shall not exercise management authority until a cooperative agreement with the Secretary allocating the maximum allowable take has been signed and implemented. The cooperative allocation agreement shall provide

procedures for allocating, on a timely basis, the maximum amount of take as determined by the state pursuant to § 216.104 of this part. Such allocation shall give first priority to incidental take within the zone described in section 3(14)(B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the state may request the Assistant Administrator to regulate the taking of the species within the zone described in section 3(14)(B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the state of such taking within the state. If such a request is made, the Assistant Administrator shall adopt and enforce within such zone, such of the state's regulatory provisions as the Assistant Administrator considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been returned to a state pursuant to this subpart, the Assistant Administrator shall provide to the state an opportunity to review all requests for permits to remove live animals from habitat within the state for scientific research or public display purposes. If the state finds that issuance of the permit would not be consistent with its management program for the species, the state.

(1) Shall so inform the Assistant Administrator within 30 days of its receipt of the application and the Assistant Administrator shall not issue the permit; and

(2) The Assistant Administrator shall provide to the permit applicant and the state an opportunity to adjust the permit application or otherwise reconcile it with the state management program for the species.

(d) After management of a species has been returned to the state, state and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 216.106 Monitoring and review of State management program.

(a) The Assistant Administrator has responsibility to monitor and review all state management programs approved pursuant to this subpart.

(b) In order to facilitate such review, each state to which management authority has been returned shall submit an annual report, not later than 120 days after the close of such state's first full

fiscal or calendar year following the effective date of the Assistant Administrator's approval of the state management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the state laws or regulations which comprise those aspects of the state management program submitted pursuant to § 216.103(b), and in the case of Alaska, § 216.103(d), or this subpart;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the state management program;

(4) A summary of state actions to protect species' habitat;

(5) A summary of all state research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of enforcement activity;

(8) A summary of present budget and staffing for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Assistant Administrator may request, or which the state deems necessary or advisable to facilitate review by the Assistant Administrator of state management of the species.

(c) Each state having an approved management program shall file a report whenever any of the following occurs:

(1) Any change in a relevant state law or regulation (amendments, repealers, or new legislation or regulations) as submitted pursuant to paragraphs (b)(2) through (b)(5) of § 216.103 of this subpart that may impair the state's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 216.104 of this subpart.

(d) All components of the state request for return of management authority, as well as annual reports

submitted under paragraph (b) of this section and any reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235.

§ 216.107 Revocation and return of State management.

(a) *Revocation of management.* The Assistant Administrator shall have responsibility to review management of a species returned to a state under this subpart and to determine whether or not the state management program continues to comply with the requirements of the Act, this subpart and the state's request for returning management authority as submitted pursuant to § 216.103 of this subpart.

(1) Upon receipt of any substantial factual information suggesting that the state management program is not being implemented or is being implemented in a manner inconsistent with the Act, this subpart, or the state's request for return of management authority, the Assistant Administrator shall, as soon as practicable, determine whether or not the state continues to comply with the requirements of the Act, this subpart and the state's request for return of management authority.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Assistant Administrator determines, that any substantial aspect of the state management program is not in compliance with the requirements of the Act, this subpart or the state's request for return of management authority, he shall provide written notice to the state of his intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Assistant Administrator shall publish notice of such intent to revoke in the *Federal Register* and shall conduct an informal public hearing on the matter if requested by the state or if the Assistant Administrator otherwise determines it to be necessary. The Assistant Administrator shall provide to the state an opportunity for consultation between the Assistant Administrator and the state concerning such actions or failures and necessary remedial actions to be taken by the state.

(3) If within 90 days after notice is provided under paragraph (a)(2) of this section, the state has not taken such remedial measures as are necessary, in the judgment of the Assistant Administrator to bring the state management program into compliance with the provision of the Act, this subpart and the state's request for return of management authority, the Assistant Administrator shall revoke the transfer of management authority by written notice to the state and publication in the *Federal Register*.

(b) Voluntary return of management authority to the Assistant Administrator.

(1) If a state desires to return management of a species of marine mammals to the Assistant Administrator, it shall provide to the Assistant Administrator notice of intent to return management. The Assistant Administrator, shall accept the return of management, and such return shall become effective, upon publication of a notice in the *Federal Register* to this effect no sooner than 30 days (except in an emergency as determined by the Assistant Administrator) nor longer than 60 days after the state has provided notice of its intent to return management.

(2) If implementation of any aspect of the state management program is enjoined by court order, the state shall advise the Assistant Administrator of such injunction and its effect on the state management program. If the state determines that the effect of the injunction is to preclude effective conservation of the species under the terms of the state management program, it shall so notify the Assistant Administrator and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the state determines that the injunction does not preclude effective conservation of marine mammals under the terms of the state management program, it shall so notify the Assistant Administrator together with the basis for the state's determination and such notice shall be treated as a report submitted pursuant to the terms of § 216.106(c)(1) of this part. In either case, the state shall provide notice to the Assistant Administrator as soon as practicable but not more than 30 days after issuance of the injunction.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a state returns management pursuant to paragraph (b) of this section, the Assistant Administrator shall resume such management authority and regulate the taking and provide for the conservation of the species within the state in accordance with the provisions of the Act and the regulations of this part.

§ 216.108 List of States to which management has been transferred.

The following states have received management authority pursuant to this part for the species listed: [Reserved]

(16 U.S.C. 1361, et seq., as amended by Pub. L. 97-98)

Dated: April 12, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-12872 Filed 5-11-82; 8:45 am]

BILLING CODE 3510-22-M

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
PUBLISHED WEEKLY
CHICAGO, ILL., MAY 1, 1919
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Great Lakes Federal Register

Wednesday
May 12, 1982

Part VI

Department of the Interior

Fish and Wildlife Service

Transfer of Marine Mammal Management Authority to States

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Procedures for Transfer of Marine Mammal Management Authority to States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service is proposing a rule to implement recent amendments to the Marine Mammal Protection Act. The proposed regulations establish procedures for the transfer of marine mammal management authority back to the States, the form and minimum requirements of a State application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority and the revocation and return to the Fish and Wildlife Service of management authority once transferred to the States.

DATE: Comments on this proposal must be submitted on or before July 12, 1982.

ADDRESS: Interested persons or organizations are requested to submit comments to the Chief, Division of Wildlife Management, United States Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. James Gillett, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (202) 632-2202.

SUPPLEMENTARY INFORMATION: On October 9, 1981, the President approved Pub. L. 97-58 amending various provisions of the Marine Mammal Protection Act ("Act"), 16 U.S.C. 1361 *et seq.* One aspect of these amendments altered the mechanism for the return of marine mammal management to the States under section 109 of the Act, 16 U.S.C. 1379. Under the pre-existing statutory procedures, States were required to request the Fish and Wildlife Service ("Service") to return management of the species to the State. If a State sought authority to allow taking of the marine mammal species under its management, the State was required to request the Fish and Wildlife Service to waive the moratorium on the taking of the species. This request required a formal Federal hearing before an administrative law judge concerning the status of the requested species, and the permissible number of animals to be

taken, as well as consideration of the State's proposed laws and regulations that would govern the taking of the species. The proposed waiver of the moratorium to allow taking of the species also required compliance with the provisions of the National Environmental Policy Act. In reviewing these procedures, Congress found that the lengthy process entailed in the return of management authority to States had resulted in a situation in which the goal of the Act—effective management to maintain healthy populations of marine mammals—was being impaired.

To remedy this problem the Amendments establish a simplified procedure under which a State could resume management of marine mammal species. This procedure entails a three step process. First, the State must submit a request to the Service for return of management authority for a given species or a number of species of marine mammals. This request and its supporting documentation are reviewed by the Service to determine if the State has developed and will implement a program for the conservation of the species which meets certain requirements set forth in the Act. Second, if the Service finds that the State program meets this initial requirement, the State must make a determination, under procedures set by the Act, of the optimum sustainable population ("OSP") of the species and the maximum allowable take of the species which is consistent with maintaining the species at OSP. Third, these determinations must be implemented through State laws and regulations and, if the range of the species extends beyond the territorial waters of the State, the State and Federal governments must agree on a process for allocating the take of the species between areas under respective State and Federal jurisdictions. Once this "cooperative allocation agreement" has been signed and implemented and the OSP and maximum allowable take determinations are final and implemented under State law, the State will have exclusive authority to manage marine mammals within the State, including its territorial waters. The only exceptions to this assumption of exclusive jurisdiction would be for takings regulated by the Federal government and takings by non-State personnel for scientific and display purposes, activities which remain under the control of the Federal government pursuant to section 109 of the Act.

The regulations proposed herein will implement the statutory procedures for return of marine mammal management

authority to the States. These regulations apply to the species of marine mammals currently managed by the Service. These species are the polar bear, sea otter, walrus, dugong, manatee and marine otter. Other species of marine mammals are managed by the National Marine Fisheries Service which is proposing corresponding regulations concurrent with this proposal. Section 18.52 is definitional. The form and minimum requirements of a State application for transfer of management authority are set forth in §§ 18.53 and 18.54. The relationship between Federal and State wildlife agencies both prior and subsequent to the transfer of management authority is defined in §§ 18.53(h), 18.55, and 18.56. The revocation and return of management authority is governed by § 18.57. In addition, § 18.58 will list States to which management authority has been returned. Specific provisions of the Service's proposed regulations are discussed below.

Section 18.51

Paragraph (a) of this section establishes the purpose of the regulations as explained above and defines the scope of the proposed regulations.

Paragraph (b) of this section excludes certain aspects of marine mammal management authority from that affected by the proposed regulations. Taking off marine mammals by Federal and local government officials in the course of their duties is governed by § 18.22 of this part and therefore the requirements of that section remain in effect. Section 18.22 relates to the taking of stranded and beached marine mammals and the taking of marine mammals for the protection of public health or welfare. In addition, since the Act does not regulate disposition of marine mammals taken before its effective date, December 21, 1972, these regulations reflect that exception. (Section 18.14 of this part does impose certain notification requirements pertaining to marine mammals taken before December 1, 1972). Accordingly, a State may adopt and enforce any State law relating to any marine mammal taken before that date without requesting a return of management authority under these regulations.

Section 18.52

This section provides definitions for several terms used primarily in this subpart. These regulations, however, apply to the entire Part 18. "Optimum Sustainable Population" or "OSP" is defined consistent with the existing

National Marine Fisheries Service definition, found at 50 CFR 216.3. Congress has specifically found that this definition accurately reflects the meaning of the term and the intent of Congress in passing the Act (H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 16 (1981)). It is important to note that OSP is a range of population levels. The upper limit of the range is the largest average supportable level within the ecosystem (carrying capacity). The lower limit of the range is the population level for a given species or stock that results in maximum net productivity.

This section also defines "State management program." The State management program consists of the legal framework under which the State will manage marine mammals. Components of this framework which are specifically required to be submitted in the State's request for return of management authority are set forth in paragraphs (b), (c) and, in the case of Alaska, (d) of § 18.53 of the proposed regulations.

Section 18.53

This section defines the form and minimum requirements of a State request for return of management authority. If a State is requesting management authority from the National Marine Fisheries Service as well as the Fish and Wildlife Service, the State may combine the request information in a single document and send copies to both agencies. The request must contain two elements: Certain aspects of the proposed State management program and supplemental information pertaining to the State management program. The request must include the text of laws, regulations, policies and other authorities of State law, and a narrative discussion of how these authorities blend to form a framework that meets the new requirements of the Act.

It is important to note that although the State management program is defined broadly by § 18.52, the request for transfer of management authority need not include all aspects of the State management program. Therefore, the State need not provide specific laws or regulations pertaining to the manner, times or amount of take, unless specifically required by § 18.53. Thus, the State need not submit as part of its request regulations pertaining to such aspects of take as bag limits, seasons, or the minimum rifle caliber that can be used in taking the species. However, the request must include, for example, a law or regulation that requires taking to be humane (see § 18.53(b)(2)(i)) even though this is a restriction on the manner

of taking, since it is part of the overall framework for management and specifically required by the Act and, as a result, the regulations.

If any necessary aspect of State law has yet to be enacted, proposed language or a commitment of intention to introduce legislation or adopt regulations must be submitted by the Governor. The Act requires the Director of the Service to find that the State "has developed and will implement" a program for the conservation of the species before management authority can be transferred. This finding can be made for some aspects of the State management program (e.g., those required to be provided by § 18.53(b)(2)(v), (b)(3), (b)(5), (b)(6)(ii) and (d)(2)) even though only proposed language or a commitment of intention is submitted. Thus, submittal of these aspects of the State management program in pre-adoption form will not preclude review and approval of the State management program. However, the failure to enact a provision substantially as proposed can be grounds for revocation of management authority pursuant to § 18.57.

It should also be noted that if a State has been transferred management authority and that authority has been returned to, or revoked by, the Director pursuant to § 18.57 of the proposed regulations, the State may, at a later date, once again request the transfer of management authority by complying with § 18.53 of the proposed regulations.

Paragraph (b) of this section lists those components of the State management program which must be submitted in the request for return of management authority. However, section 109 of the Act requires Alaska's management program to contain additional components relating to regulating subsistence take by rural Alaska residents (both Natives and non-Natives). These requirements are set out in paragraph (d) of this section. The requirements of paragraph (b) and, in the case of Alaska, paragraphs (b) and (d), are considered to be the minimum amount necessary to enable the Director to make the determination, required by section 109(b)(1)(A) of the Act, of whether the State program "is consistent with the purpose, policies and goals of (the) Act and with international treaty obligations."

Section 18.53(b)(1) requires the State to list the scientific and common names and estimated range of the species of marine mammals for which it seeks management authority. A state may request the transfer of management for more than one species. If this is the case,

those components of the State management program that apply to more than one species do not need to be repeated for each species. Rather, the State should list the species and the components of the State management program that apply to some or all of the species. Those components of the State management program that apply to individual species should be so designated. The State should discuss which components apply generally and which apply specifically in the narrative discussion required by § 18.53(a)(2).

Paragraphs (b)(2)(i) through (b)(2)(v) and paragraph (d)(1) of this section are taken directly from section 109 of the Act and therefore require little additional explanation. A few points should, however, be noted.

First, a State to which management authority has been transferred for a given species is required to regulate the taking of that species so as to prevent its population from declining below its OSP. However, the Act provides that in the case of Alaska, subsistence may be allowed even if the species is below its OSP, as long as the amount of subsistence take will nevertheless permit the species to increase toward its OSP. Paragraphs (b)(2)(ii) and (d)(1)(iv) of this section reflect this distinction.

Second, in accordance with the Act, paragraph (b)(2)(iv) requires the State to prohibit take for scientific and display purposes, with the exception of take for such purposes done by or on behalf of the State (management of this take is retained by the Fish and Wildlife Service). However, the Federal regulation of take for scientific and display purposes will be consistent with State management as provided by § 18.55(c) of the proposed regulations.

Third, paragraph (b)(2)(v) requires the State to regulate the incidental taking of the species in a manner consistent with the Act and any Federal regulation of incidental taking. While the State regulations need to be consistent with the Federal regulations, they need not be identical.

Paragraph (b)(3) of this section requires that the State program contain procedures for acquiring and evaluating data relating to OSP and the maximum allowable take of the species. This review need not comply with § 18.54 procedures pertaining to determining OSP and the maximum allowable take of the species. However, if the review, which should be done at least annually, discloses that OSP and maximum allowable take determinations may need to be adjusted, the State must use those procedures required by § 18.54 in making these adjustments.

Paragraph (b)(6) of this section lists certain aspects of the State management program which must be considered by the Director in making a determination as to whether the State's program is consistent with the Act.

The description of the organization of State offices involved in the administration and enforcement of the State management program need describe only the various responsibilities of these offices as they relate to marine mammal management and how these offices relate to one another. In the latter regard, an organizational chart would be helpful.

Paragraph (b)(6)(ii) relates to permits involving marine mammals. The State should describe what types of permits apply to actions involving marine mammals, the laws under which such permits are granted, and what factors guide discretion on permit applications.

The State should discuss, pursuant to paragraph (b)(6)(iii), certain aspects of judicial review such as the courts which have jurisdiction to review administrative decisions, who may challenge administrative decisions, the scope of judicial review, and the range of available remedies.

The State should also discuss, under paragraph (b)(6)(iv), such aspects of administrative rulemaking as notice procedures, public comment requirements, *ex parte* rules and hearing requirements.

Although paragraphs (b)(6)(ii) through (b)(6)(iv) pertain to State laws on specific aspects of marine mammal management, copies of these laws do not need to be included with those provided pursuant to § 18.53(a)(1). A general description of the provisions, limitations and exceptions of these laws will be sufficient.

Section 18.53(c) requires the State to submit in its request for the transfer of management authority supplemental information pertaining to the State management program. This information need only be submitted in summary form. It is believed that compiling the information in this form will not unduly burden the State, yet will provide the Director with a baseline from which to evaluate the subsequent administration of marine mammal management by the State.

Section 109(f)(1)(B) of the Act requires Alaska to provide economic opportunities to resident subsistence users of rural coastal village in the event non-subsistence consumptive uses of marine mammals will be allowed. Section 18.53(d)(2) of the proposed regulations requires Alaska to describe the types of economic opportunities to be provided in this event. Alaska need

not specify which types of economic opportunities would be available in specific cases. Instead, the State should describe, in addition to which general types of economic opportunities will be made available, the procedures to be used in deciding (a) when these opportunities will be made available, (b) the extent to which they will be made available, and (c) to whom they will be made available.

Paragraphs (e) through (h) of § 18.53 provide procedures for the Director's review of a request for return of management authority. The preliminary review procedures of paragraph (e) are not designed as a mechanism for piecemeal review of the State's management program. This subsection can be used either to gain guidance on an entire program before formal submission, or as a means of evaluating proposed aspects of the State management program before final enactment and submission. Furthermore, pursuant to section 109(b)(2) of the Act, 16 U.S.C. 1379(b)(2), the State may not manage marine mammals, even though the Director has approved its management program, until the events listed in § 18.53(h) of these regulations have occurred. When the Director finds that the State's OSP and maximum allowable take determinations are final and implemented under State law, and a cooperative allocation agreement, if necessary, has been implemented, a notice will be published in the *Federal Register* formally transferring management authority. The State can begin management at that time.

Section 18.54

This section describes procedures which the State must provide for in its management program and employ in determining the OSP of a given species and the maximum allowable number of animals that can be taken without reducing the population below OSP. These procedures are required by section 109(c)(2) of the Act, 16 U.S.C. 1379(c)(2).

The OSP and maximum allowable take determination process is composed of three steps. First, pursuant to paragraph (c) of this section, the State must make initial determinations regarding OSP and maximum allowable take. Second, under paragraph (d), the State must provide public notice of its initial determinations. The State must make copies of its initial determinations and supporting documentation available for public inspection and must provide a reasonable time in which a request for a public hearing can be made.

The third step is finalization of the determinations. If no request for a public

hearing is made within the prescribed time period, the initial determinations become final. If, on the other hand, a request for public hearing is made, the determinations do not become final until the State has complied with the procedures of paragraphs (e) through (g) of this section.

Paragraph (e) requires public notice of the State hearing. This notice must include certain information including the State's initial determinations, the date(s), location(s) and purpose of the hearing, the name(s) of person(s) who will preside at the hearing and information on how interested persons can participate in the hearing. The State must also make available a description of the documentation and the witnesses upon which it will rely in the hearing. This information must be made available sufficiently in advance of the hearing to allow preparation by interested parties of supporting or rebuttal testimony.

Paragraph (f) describes procedures which must be employed in the hearing itself. The hearing must be transcribed verbatim. In accordance with the act, final determinations must be based on the best available scientific information. This information must be of sufficient quantity and quality to insure that any taking will be consistent with the maintenance of OSP. See, *Committee for Humane Legislation v. Richardson*, 414 F. Supp. 297 (D.D.C. 1976), *aff'd* 540 F.2d 1141 (D.C. Cir. 1976). In the case of Alaska when the species is below OSP, maintenance of OSP includes the amount of subsistence take which will allow the species to increase toward OSP. In the recent amendments to the Act, Congress specifically overruled the decision of the United States District Court in *People of Iogiak v. United States*, 470 F. Supp. 423 (D.D.C. 1979), which had exempted take of marine mammals by Alaska natives from State management. Amended section 101(b) now allows State management of subsistence take by Alaska natives under section 109. Moreover, section 101(b) now restricts the definition of Alaska natives to those natives who reside in Alaska.

Interested persons must be afforded the opportunity to participate in the hearing to the extent specified in paragraph (f)(3). Other aspects of hearing procedures are left to the discretion of the presiding officer(s) in accordance with State law.

Paragraph (g) implements the Act's procedures for review of the hearing record. The State may employ any one of three methods for reviewing the record and making the final

determinations based on that record. Independent of which method is used, the final determinations must be based only on information contained in the record of the public hearing. Once the final determinations are made, the State must develop a supporting decision document. This document must contain a statement of these determinations including findings and conclusions on all material issues and the reasons and basis therefor. This decision documentation must be made available to the Director and the public.

Finally, paragraph (h) of this section prescribes the parameters for judicial review of the final OSP and maximum take determinations.

The procedures required by § 18.54 apply only to OSP and maximum allowable take determinations. However, in the case of Alaska when the species is below OSP, the Act provides that subsistence take may be allowed only to the extent that the take will nevertheless allow the species to increase toward OSP. Since the maximum extent of subsistence take is subject to and must be based upon the OSP determination, the maximum allowable extent of subsistence take must also be determined in the same process. However, the extent of subsistence take that will actually be permitted within the maximum amount need not be determined through § 18.54 procedures.

If the species is at or above OSP, the State need not employ § 18.54 procedures to determine such regulatory controls on take as bag limits and quotas within the maximum biologically allowable take. Correspondingly, changes in bag limits, quotas and other similar regulatory controls on take can be made at any time through applicable State rulemaking procedures as long as the amount of take does not exceed the maximum allowable level of take as determined through § 18.54 procedures.

Section 18.55

This section describes Federal and State responsibilities after transfer of management authority. Paragraph (a) describes the cooperative allocation agreement. In the case of a species whose range extends beyond the territorial waters of a State, this agreement is actually a prerequisite to the transfer of management authority. Once implemented, it describes a jurisdictional relationship between the Federal and State government after transfer. The purpose of the agreement is to provide procedures to allocate between the Fishery Conservation Zone (FCZ) under Federal jurisdiction and lands and waters under State

jurisdiction the maximum allowable take which the State has determined pursuant to § 18.54. This instrument was designed by Congress to ensure that the State does not preempt all available take so as to impinge upon federal incidental take determinations in the FCZ, and to ensure that the Secretary does not make unjustifiable claims respecting numbers of animals purported to be needed to carry out his responsibilities under section 101 of the Act. See H.R. Rep. No. 97-228, 97th Cong., 1st Sess. p. 26 (1981).

Pursuant to paragraph (b) of this section, once a State has management authority returned, it can request the Director to regulate hunting and subsistence take of the species within the FCZ in a manner consistent with State regulation of such take. The Director shall adopt, after notice and comment procedures, those State regulatory provisions that he finds to be consistent with his administration of section 101(a) of the Act, 16 U.S.C. 1371(a), within the FCZ. This process was established by section 109(d)(2) of the Act as a mechanism for the Federal adoption of State regulations in areas beyond State territorial waters. H.R. Rep. No. 97-228, 97th Cong., 1st Sess., p. 26 (1981).

In accordance with the terms of the Act, the Service remains responsible for regulating the take of marine mammals for scientific and public display purposes despite transfer of management authority to the State. Pursuant to the Act, and paragraph (c) of § 18.55 of the proposed regulations, the State is granted the opportunity to review applications for such take for consistency with the State's management of the species. Under the provisions of this subsection, the Director will notify the State upon receipt of an application to remove live animals from the wild within the State for scientific research or public display purposes. The State has 30 days in which to review the application. If the State finds that the permit would not be consistent with its management of the species and so notifies the Director, the Director would not issue the permit. However, the Director will provide to the State and the applicant an opportunity, through consultations or other appropriate mechanisms, to adjust the permit application so that it is consistent with the State's management program.

Paragraph (d) of § 18.55 encourages the State and the Service to cooperate, to the maximum extent practicable, in conserving the species of marine mammals. This may include cooperation in research, enforcement and other

aspects of marine mammal management. It is believed that such cooperative activities can provide the optimum utilization of the resources, personnel, expertise, knowledge and experience of both State and Federal wildlife agencies.

Section 18.56

This section provides procedures for the monitoring and review of the State management program. Under section 109(e) of the Act, 16 U.S.C. 1379(e), the Director has the responsibility, after management authority has been returned to the State, to monitor the State's implementation of its program. To facilitate this review process, the State is required to submit an annual report on its management of the species, and shall make a report pursuant to paragraph (c) of this section whenever either of the two events listed in that subsection occur.

Paragraph (b) defines the components of the annual report. Any substantive changes in the State laws or regulations provided in the original request pursuant to § 18.53(b) and, in the case of Alaska, § 18.53(d), must be described in the annual report. The report should include a discussion of how such changes affect implementation of the management program. However, the extent of each discussion should be proportional to the importance of that change. For example, a change in rulemaking procedures (§ 18.53(b)(6)(iv)) will require less attention than a change in laws originally provided, pursuant to § 18.53(b)(2), concerning the take of the species.

Other than paragraph (b)(1), all other categories of information are limited by qualifiers such as "pertinent" and "significant" or simply seek information in summary form. Thus, the information provided need not be exhaustive, but should be sufficiently detailed and complete to provide the Director with a fair assessment of the administration of the State management program.

Paragraph (c) of this section requires the State to file a report when either of two specified events occurs. These events concern either the very foundation of the State management program or the status of the species itself and therefore require immediate review by the Director.

A report submitted pursuant to paragraph (c) should describe the event and how it affects marine mammal management. The extent of discussion should correspond to the magnitude of the problem for either the State management program or the status of the species. For example, a change in regulatory procedures for acquiring and

evaluating data relating to OSP (§ 18.53(b)(3)) would in most cases require less discussion than a statutory or regulatory amendment allowing take in excess of the maximum allowable take determined pursuant to § 18.54 (§ 18.53(b)(2)(iii)).

Paragraph (d) of § 18.56 provides that all components of the State management program as well as annual reports submitted pursuant to § 18.56(b) and reports submitted pursuant to § 18.56(c) will be available for inspection and copying at the Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C.

Section 18.57

This section provides procedures and standards for the Director's review of state management of a species of marine mammals. In addition, this section provides procedures for the voluntary return of management to the Director by the state.

The Director's direct review of state management begins upon receipt of any substantial factual information suggesting that the State management program is not being implemented or is being implemented inconsistent with the Act, the regulations of this subpart or the State's request for return of management authority.

Upon receipt of any such information, the Director will make a determination of whether or not the State has continued to comply with the Act, the regulations of subpart F of Part 18 and the State's request for return of management authority. If the Director's determination is that the State is no longer in compliance, the State will be informed of the Service's intent to revoke management authority and the bases for the determination. The Director will also publish in the *Federal Register* a notice of intent to revoke management authority. A public hearing will be held if requested by the State or otherwise determined by the Director to be necessary. The State will be provided an opportunity to consult on the deficiencies in State management which caused the Director's determination and the necessary remedial measures. If the State fails to take the necessary remedial measures within 90 days of the notice of intent to revoke provided by the Director, the Director shall revoke management. The Director will then manage the concerned species in accordance with the Act and the regulations of Part 18.

Paragraph (b) of this section provides procedures for the voluntary return of management authority to the Director by the State. The State need only notify the Director of its intent to return

management. Unless the Director determines that an emergency exists which requires immediate assumption of management authority, the Director will publish a Notice in the *Federal Register* between 30 and 60 days after receiving notice from the State. This Notice will act as the formal assumption of management authority by the Director. As with the revocation of management authority, the Director will then manage the concerned species of marine mammals pursuant to the Act and the regulations of Part 18.

Paragraph (b)(2) of this section provides procedures to be followed in the event that the implementation of any aspect of the State management program is enjoined by court order. Within 30 days of the injunction the State is to evaluate the effect of the injunction on State management of the species and notify the Director. If the State determines that the injunction precludes effective conservation of the species under the management program, the notice is treated as a notice of intent to return management pursuant to § 18.57(b)(1). If the State determines that the injunction does not preclude effective conservation of the species, the notice is treated as a report submitted pursuant to § 18.56(c)(1) and reviewed pursuant to § 18.57(a).

Section 18.58

This section provides notification of the States to which management have been returned. Accordingly, it will be updated from time to time when management has been returned to a new State or for a new species.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Division of Wildlife Management, Room 506, Matomic Building, 1717 H Street, NW, Washington, D.C. 20240, and may be examined by appointment during regular business hours. Based on the draft environmental assessment, the Director has determined that the proposed rules would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C). A determination will be made at the time of final rulemaking as to whether the final regulation is a major Federal Action significantly affecting the quality of the human environment within the meaning of that section.

Primary Author

The primary author of this proposal is Frank J. Ruswick, Jr., Division of

Conservation and Wildlife, Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this is not a major rule and does not require preparation of a regulatory analysis under Executive Order 12291.

The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. These determinations are discussed in more detail in a Determination of Effects which has been prepared by the U.S. Fish and Wildlife Service.

The information collections contained in this proposed regulation are not subject to Office of Management and Budget clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) since there are fewer than ten respondents annually. The regulation applies only to the States of Alaska, Florida, California, Oregon, and Washington.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Intergovernmental Relations, Export, Imports, Transportation, and Marine mammals.

Proposal of Regulation

PART 18—MARINE MAMMALS

Accordingly, it is hereby proposed to amend 50 CFR Part 18, by:

Subpart F is revised as follows:

Subpart F—Transfer of Management Authority to the States

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|-------|--|
| Sec. | |
| 18.51 | Purpose and scope of regulations. |
| 18.52 | Definitions. |
| 18.53 | Review and approval of State request for return of management authority. |
| 18.54 | Determinations and hearings under Section 109(c)(2). |
| 18.55 | State and Federal responsibilities after transfer of management authority. |
| 18.56 | Monitoring and review of state management program. |
| 18.57 | Revocation and return of state management. |
| 18.58 | List of states to which management has been returned. |

Subpart F—Transfer of Management Authority to States

Note.—The information collections contained in this Subpart F are not subject to Office of Management and Budget clearance under 44 U.S.C. 3507 since there are fewer than ten respondents annually.

§ 18.51 Purpose and scope of regulations.

The regulations contained in this subpart implement section 109 of the Act which provides for the transfer of marine mammal management authority to the States.

(a) The regulations of this subpart set forth the procedures for the transfer of marine mammal management authority to a State, the form and minimum

requirements of a State application for the transfer of management authority, the relationship between Federal and State wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority back to the States.

(b) Nothing in this subpart shall prevent (1) the taking of a marine mammal by or on behalf of a Federal, State or local government official, in accordance with § 18.22 of this part, or (2) the adoption or enforcement of any State law or regulation relating to any marine mammal taken before December 21, 1972.

§ 18.52 Definitions.

The following definitions apply to this part.

(a) "Optimum Sustainable Population" or "OSP" means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(b) "State management program" means existing and proposed State laws, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(c) "State regulation" means the whole or part of a State agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a State agency and which is duly promulgated in accordance with established procedure.

§ 18.53 Review and approval of State request for management authority.

(a) Any State may request the transfer of marine mammal management authority for a species of marine mammals by submitting a written request to the Director, U.S. Fish and Wildlife Service. The request must include:

(1) Copies of existing and proposed laws, regulations, policies and other authorities of State law which comprise those aspects of the State management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d)(1) of this section;

(2) A narrative discussion of the laws, regulations, policies and other

authorities which comprise those aspects of the State management program outlined in paragraph (b) of this section, and, in the case of Alaska, paragraph (d) of this section, which explains the program in terms of the requirements of the Act and the regulations of this subpart; and

(3) Supplemental information as required by paragraph (c) of this section.

(b) A request for transfer of marine mammal management authority will not be approved unless it contains the following:

(1) The scientific and common names and estimated range of the species of marine mammals subject to the State management program.

(2) Provisions concerning the take of marine mammals that—

(i) Require that the taking of marine mammals be humane as defined by section 3(4) of the Act;

(ii) Prohibit the taking of marine mammals until the following have occurred:

(A) The State, pursuant to the requirements of § 18.54 of this subpart, has determined that the species is at its Optimum Sustainable Population (OSP) and the maximum number of animals that may be taken without reducing the species below its OSP and, in the case of Alaska, the maximum number that can be taken for subsistence uses while allowing the species to increase toward its OSP;

(B) The determination as to OSP and maximum take are final and implemented under State law;

(C) And a cooperative allocation agreement, if required under § 18.55(a) of this subpart, is implemented;

(iii) Prohibit take in excess of the maximum number of animals that may be taken as determined pursuant to § 18.54 of this subpart; provided that for Alaska, subsistence take may be allowed in accordance with paragraph (d)(1)(i) of this section;

(iv) Prohibit take that is for scientific or public display purposes except such take by or on behalf of the State, or pursuant to a Federal permit issued under § 18.31 of this part; and

(v) Regulate the incidental taking of the species in a manner consistent with section 101(a) (2), (4) and (5) of the Act and Federal regulation, if any.

(3) Procedures for acquiring and evaluating data and other new evidence relating to OSP of the species and the maximum allowable take, and if required on the basis of such evaluation, for amending determinations as to OSP and maximum take and restricting take accordingly.

(4) Procedures for the resolution of differences between the State and the

Service that might arise during the development of a cooperative allocation agreement pursuant to § 18.55(a) of this subpart.

(5) Procedures for the submission of an annual report meeting the requirements of § 18.56(b) of this subpart to the Service regarding the administration of the State management program during the reporting period.

(6) A description of:

(i) The organization of State offices involved in the administration and enforcement of the State management program;

(ii) Any permit system relating to marine mammals, the laws that apply to such permits, and the procedures to be used in granting or withholding such permits;

(iii) State laws and procedures relating to judicial review of administrative decisions as they relate to the State management program;

(iv) State laws and procedures relating to administrative rulemaking as they relate to the State management program;

(c) In addition to the aspects of the State management program required to be submitted by paragraph (b) of this section, the State shall submit information, in summary form, relating to:

(1) The anticipated staffing and funding of State offices involved in the administration and enforcement of the State management program;

(2) Anticipated research and enforcement activities relating to conservation of the species for which management authority is sought; and

(3) Such other material and information as the Director may request or which the State may deem necessary or advisable to demonstrate the compatibility of the State management program with the policy and purposes of the Act and the rules and regulations issued thereunder.

(d) In addition to the requirements contained in paragraphs (b) and (c) of this section, a request for the transfer of marine mammal management authority by the State of Alaska must contain the following:

(1) Provisions concerning the take of marine mammals that provide for subsistence use of the species as defined in section 109(f)(2) of the Act by rural Alaska residents in the following manner:

(i) Subsistence uses are to be the priority consumptive use of the species;

(ii) Non-subsistence consumptive uses are to be authorized only if the appropriate State agency finds, on the basis of the administrative record for

the rule authorizing non-subsistence consumptive use, that such non-subsistence consumptive use will have no significant adverse impact upon subsistence uses of the species and the regulation of non-subsistence consumptive use will, to the maximum extent practicable, provide economic opportunities for the resident subsistence users of the rural coastal villages in Alaska;

(iii) Subsistence use is to be accomplished in a non-wasteful manner;

(iv) If the species is below OSP, subsistence use may be allowed only to the extent of the maximum level of take, if any, which will permit the species to increase toward OSP; and

(v) If restriction of subsistence uses is required, restriction is to be based upon the customary and direct dependence upon the species as a mainstay of livelihood, local residency, and the availability of alternative resources.

(2) A description of the types of economic opportunities to be provided to resident subsistence users of rural coastal villages in the event non-subsistence consumptive uses of marine mammals will be allowed, and the procedures to be used in providing these economic opportunities.

(e) To assist States in preparing the State management program for submission, the Director will, at the written request of any State, make a preliminary review of any aspects of the State management program. This review will be advisory in nature and shall not be binding upon the Director. Notwithstanding preliminary review by the Director, once any proposed aspects of the State management program have been prepared and submitted in final form, they shall be subject to final review and approval under paragraphs (f) through (h) of this section.

(f) Upon receipt of a request submitted in accordance with paragraph (a) of this section, the Director will publish in the *Federal Register* a notice stating that the State management program under review will be available for inspection at the locations stated in the notice, and providing information on how copies may be obtained. The notice will also provide that written data, views, comments, or requests for an informal public hearing on the State management program may be submitted to the Director within the time specified in the notice.

(g) The Director shall approve the request for transfer of the management if, after consideration of the materials provided pursuant to this section and public comment received on such material, he determines that the State has developed and will implement a

program for the conservation of the species that is consistent with the provisions, purposes, policies and goals of the Act, international treaty obligations and the regulations of this part.

(h) Notwithstanding the provisions of paragraph (g) of this section, the State may not exercise management authority, which is retained by the Director, until such time as the determinations required by § 18.54 of this part are final and implemented under State law, and, if a cooperative allocation agreement for the species is required under § 18.55(a) of this part, such agreement is implemented. At such time of final implementation, the Director shall publish in the *Federal Register* a notice transferring management of the species to the State.

§ 18.54 Determinations and hearings under Section 109(c)(2).

(a) *Introduction.* In order to gain approval of its marine mammal management program the State must provide for a process, consistent with Section 109(c)(2) of the Act, to determine the optimum sustainable population of the species and the maximum number of animals that may be taken from species it manages. The State process must be completed before the State may exercise any management authority over the subject marine mammals and it must include the elements set forth below.

(b) *Basis, purpose, and scope.* The process set forth in this section is applicable to and required for only the determinations of the OSP of the species and maximum number that may be taken without reducing it below its OSP and, in the case of Alaska if the species is below OSP, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP. The State need not allow the maximum take, as determined in accordance with this process, that is biologically permissible. The State may set and change regulations establishing bag limits, quotas, seasons, areas, manner of take, etc. within the maximum biologically permissible take pursuant to its other rulemaking criteria, authority, and procedures. Compliance with the process set forth in this section would not be required again unless the State proposes to modify its determinations of the status of the species with respect to its OSP or the maximum permissible take from that species.

(c) *Initial determinations by the State.* The State agency with management authority for the species of marine mammals shall make initial determinations on the basis of the best scientific evidence available of: (1)

Whether or not it is at its OSP; (2) if so, the maximum number of that species that may be taken without reducing it below its OSP; and (3) if not, in the case of Alaska, the maximum number of animals that may be taken, if any, for subsistence uses without preventing the species from increasing toward its OSP.

(d) *Notice and review of initial determinations and request for hearing.* The State agency shall provide notice of its initial determinations to the Director and the public and shall provide access to or copies of the documentation supporting its determinations to the Director and the public. The State agency shall indicate in the notice of its initial determinations the location(s) and hours during which such documentation may be inspected and the costs, if any, of copies of such documentation. The State agency shall also indicate in the notice that any interested person may request a hearing regarding the initial determinations and shall provide a reasonable time to request the hearing of not less than 30 days after the notice, taking into account the time required to advise the public of the initial determinations and to make the supporting documentation readily available to interested persons for their consideration. If a request for a hearing is not made within the prescribed time period, the initial determinations shall be treated as final.

(e) *Notice of hearing.* If a request for a hearing is made within the prescribed time period by any interested person, the State agency shall provide notice of the hearing to the Director and the public not less than 30 days in advance of the scheduled date(s). The notice shall include the date(s), location(s), and purpose of the hearing, a recitation of the initial determinations, the name(s) of the person(s) who will preside at the hearing, and the manner and date by which interested persons must notify the State agency or presiding officer(s) of their desire to participate in the hearing. The State shall also make available and distribute upon request a list of witnesses and a description of the documentation and other evidence that will be relied upon by the State's witnesses in support of its initial determinations sufficiently in advance of the hearing date so as to allow interested persons to prepare questions and supporting or rebuttal testimony for the hearing.

(f) *Conduct of the hearing.* (1) The hearing shall be publicly conducted and reported verbatim by an official reporter.

(2) The State shall sponsor all written documentation in support of its initial

determinations with witnesses who are able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein provided that, except by agreement of the parties, the State agency may not call any witnesses or introduce any documentation into the record unless the advance notice requirements of paragraph (e) of this section are met with respect to such witnesses or documentation.

(3) Any interested person who has notified the State agency of his desire to participate in the hearing pursuant to paragraph (e) of this section may participate in the hearing by presenting oral or written testimony or cross-examining witnesses of other parties with respect to matters relevant to the State's initial determinations, provided that any such written documentation must be sponsored by a witness who is able, by virtue of training and experience, to respond fully to cross-examination regarding the facts and conclusions contained therein.

(4) The presiding officer(s) shall conduct the hearing in accordance with such other rules of evidence, criteria, and procedures as are necessary and appropriate for the expeditious and effective determination of the issues. The presiding officer(s) may provide for oral argument and/or written briefs at the end of the hearing.

(5) Final determinations on the issues specified in paragraph (c) of this section must be supported by the best available scientific information so as to insure that any taking will be consistent with the maintenance of OSP.

(g) *Review of the hearing record and final determinations.* (1) The State agency may provide for either: (i) Review and evaluation of the hearing record by the presiding officer(s) and transmittal by the presiding officer(s) of recommended final determinations to the decision-maker(s) in the State agency; or (ii) review, and evaluation, of the hearing record, and final determinations by the presiding officer(s); or (iii) review and evaluation of the hearing record and final determinations by the State agency without benefit of any recommendations by the presiding officer(s). In any event, the final determinations by the State agency and/or the presiding officer(s) must be made solely on the basis of the record developed at the hearing. The State agency may not rely on oral or written evidence which was not presented at the hearing and made available to the parties for cross-examination and rebuttal testimony. Any such oral or written information

transmitted to the presiding officer(s) or other members of the State agency responsible for the final determinations shall be treated as *ex parte* communications and may not be considered part of the record for decision.

(2) The State agency shall make final determinations of the issues set forth in paragraph (c) of this section and shall include in its statement of final determinations a statement of findings and conclusions and the reasons or basis therefor.

(3) The State agency shall advise the Director and the public of its final determinations and shall provide access to or copies of its decision document.

(h) *Judicial review.* The State agency's final determinations after a hearing must be supported by substantial evidence in the record of the hearing. Opportunity for judicial review of the State agency's final determinations must be available under State law. The scope of judicial review shall be equivalent to that provided for in 5 U.S.C. 706 (2) (A) through (E).

§ 18.55 State and Federal responsibilities after transfer of management authority.

(a) After determinations required by § 18.54 of this subpart have been made in respect to a species whose range extends beyond the territorial waters of the State, the State shall not exercise management authority until a cooperative agreement with the Secretary has been signed and implemented. The cooperative allocation agreement shall provide procedures for allocating, on a timely basis, the maximum amount of take as determined by the State pursuant to § 18.54 of this subpart. Such allocation shall give first priority to incidental take within the zone described in section 3(14) (B) of the Act as provided for under section 101(a) of the Act, except that in the case of Alaska, first priority shall be given to subsistence use.

(b) For those species to which paragraph (a) of this section applies, the State may request the Director to regulate the taking of the species within the zone described in section 3(14) (B) of the Act for subsistence uses and/or hunting in a manner consistent with the regulation by the State of such taking within the State. If such a request is made, the Director shall adopt and enforce within such zone, such of the State's regulatory provisions as the Director considers to be consistent with the administration within such zone of section 101(a) of the Act.

(c) If management authority for a species has been returned to a State pursuant to this subpart, the Director

shall provide to the State an opportunity to review all requests for permits to remove live animals from habitat within the State for scientific research or public display purposes. If the State finds that issuance of the permit would not be consistent with its management program for the species:

(1) The State shall so inform the Director within 30 days of its receipt of the application and the Director shall not issue the permit; and

(2) The Director shall provide to the permit applicant and the State an opportunity to adjust the permit application or otherwise reconcile it with the State management program for the species.

(d) After management of a species has been returned to the State, State and Federal authorities shall cooperate to the maximum extent practicable in conserving the species of marine mammals.

§ 18.56 Monitoring and review of State management program.

(a) The Director has responsibility to monitor and review all State management programs approved pursuant to this subpart.

(b) In order to facilitate such review, each State to which management authority has been returned shall submit an annual report not later than 120 days after the close of such State's first full fiscal or calendar year following the effective date of the Director's approval of the State management program, and at the same time each following year, or at such other time as may be agreed upon. The report shall contain the following information current for each reporting period:

(1) Any changes in the State laws or regulations which comprise those aspects of the State management program submitted pursuant to § 18.53(b), and, in the case of Alaska, § 18.53(d), of this subpart;

(2) Pertinent new data on the marine mammal species or the marine ecosystems in question including a summary of the status, trend and general health of the species;

(3) A summary of available information relating to takings under the State management program;

(4) A summary of State actions to protect the species' habitat;

(5) A summary of all State research activity on the species;

(6) Any significant changes in the information provided with the original request for transfer of management authority;

(7) A summary of all enforcement activity;

(8) A summary of present budget and staffing for the marine mammal activities in the categories of research, management and enforcement;

(9) Any other information which the Director may request, or which the State deems necessary or advisable to facilitate review by the Director of State management of the species.

(c) Each State having an approved management program shall file a report whenever any of the following occurs:

(1) Any change in a relevant State law or regulation (amendments, repealers, or new legislation or regulations) as submitted pursuant to paragraphs (b)(2) through (b)(5), and, in the case of Alaska, paragraph (d)(1), of § 18.53 of this subpart that may impair the State's ability to implement the program;

(2) Any significant natural or manmade occurrence or any new scientific information that may warrant reconsideration of the determinations made pursuant to § 18.54 of this subpart.

(d) All components of the State request for return of management authority, as well as annual reports submitted under paragraph (b) of this section and reports submitted under paragraph (c) of this section, shall be available for inspection and copying at the Division of Wildlife Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

§ 18.57 Revocation and return of State management.

(a) Revocation of management. The Director has the responsibility to review management of a species returned to a State under this subpart and to determine whether or not the State management program continues to comply with the requirements of the Act, this subpart and the State's request for return of management authority as submitted pursuant to § 18.53 of this subpart.

(1) Upon receipt of any substantial factual information suggesting that the State management program is not being implemented or is being implemented in a manner inconsistent with the Act, this subpart, or the State's request for return of management authority, the Director

shall, as soon as practicable, determine whether or not the State continues to comply with the requirements of the Act, this subpart and the State's request for return of management authority.

(2) Whenever pursuant to a review as specified in paragraph (a)(1) of this section, the Director determines, that any substantial aspect of the State management program is not in compliance with the requirements of the Act, this subpart or the State's request for return of management authority, he shall provide written notice to the State of his intent to revoke management authority, together with a statement, in detail, of those actions or failures to act upon which such intent to revoke is based. The Director shall publish notice of such intent to revoke in the *Federal Register* and shall conduct an informal public hearing on the matter if requested by the State or if he otherwise determines it to be necessary, and he shall provide to the State an opportunity for consultation between him and the State concerning such actions or failures and necessary remedial actions to be taken by the State.

(3) If within 90 days after notice is provided under subparagraph (a)(2) of this section, the State has not taken such remedial measures as are necessary, in the judgment of the Director, to bring the State management program into compliance with the provisions of the Act, this subpart and the State's request for return of management authority, the Director shall revoke the transfer of management authority by written notice to the State and publication in the *Federal Register*.

(b) Voluntary return of management authority to the Director.

(1) If a State desires to return management of a species of marine mammals to the Director it shall provide to the Director notice of intent to return management. The Director shall accept the return of management, and such return shall become effective, upon publication of a notice in the *Federal Register* to this effect no sooner than 30 days (except in an emergency as determined by the Director) nor longer than 60 days after the State has

provided notice of intent to return management.

(2) If implementation of any aspect of the State management program is enjoined by court order, the State shall advise the Director of such injunction and its effect on the State management program. If the State determines that the effect of the injunction is to preclude effective conservation of the species under the terms of the State management program, it shall so notify the Director and such notification shall be treated as a notice of intent to return management as provided in paragraph (b)(1) of this section. If the State determines that the injunction does not preclude effective conservation of marine mammals under the terms of the State management program, it shall so notify the Director together with the bases for the State's determination and such notice will be treated as a report submitted pursuant to the terms of § 18.56(c)(1) of this part. In either case, the State shall provide notice to the Director as soon as practicable but not more than 30 days after issuance of the injunction.

(c) When revocation of a management authority pursuant to paragraph (a) of this section becomes final, or when a State returns management pursuant to paragraph (b) of this section, the Director shall resume such management authority and regulate the taking and provide for the conservation of the species within the State in accordance with the provisions of the Act and the regulations of this part.

§ 18.58 List of States to which management has been transferred.

The following States have received management authority pursuant to this part for the species listed: [Reserved].

(16 U.S.C. 1361 et seq., as amended by Pub. L. 97-58)

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-12873 Filed 5-11-82; 8:45 am]

BILLING CODE 4310-55-M

Federal Register

**Wednesday
May 12, 1982**

Part VII

Department of the Interior

Bureau of Land Management

**Outer Continental Shelf, Southern
California; Oil and Gas Lease Sale No.
68; Notice of Leasing Systems, Sale No.
68**

4310-84

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Outer Continental Shelf
Southern California

Oil and Gas Lease Sale No. 68

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300).
2. Filing of Bids. Sealed bids will be received by the Manager, Pacific Outer Continental Shelf (OCS) Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until 4:00 p.m., p.s.t., June 10, 1982; or by personal delivery to the Los Angeles Convention Center, 1201 S. Figueroa St., Room 217, Los Angeles, California 90015 between the hours of 8:30 a.m., p.s.t. and 9:30 a.m., p.s.t., June 11, 1982. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., p.s.t., June 11, 1982. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published at 47 FR 14785; April 6, 1982.
3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., p.s.t., June 11, 1982," must be submitted for each tract. A suggested form appears in 43 CFR Part 3300, Appendix

A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to no more than five decimal places after the decimal point, e.g., 50.12345 percent, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300 Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental payment and a minimum annual royalty of \$8 per hectare or \$3 per acre, or fraction thereof. The following systems will be utilized:

- (a) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on tracts 68-9, 68-10, 68-13, 68-17, 68-23, 68-24, 68-57, 68-58, 68-59, 68-60, 68-61, 68-68, 68-70, 68-74, 68-78, 68-79, 68-80, 68-81, 68-82, 68-83, 68-84, 68-85, 68-90, 68-91, 68-92, 68-93, 68-94, 68-95, 68-96, 68-101, 68-124, 68-131, 68-139, 68-140, 68-148, 68-149,

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of \$25 or more per acre or fraction thereof or \$62 or more per hectare or fraction thereof.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

11. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following leasing maps or official protraction diagrams which are available from the Manager, Pacific Ocean Continental Shelf Office at the first address stated in paragraph 2:

68-150, 68-153, 68-154, 68-155, 68-156, 68-157, 68-158, 68-164, 68-165, 68-168, 68-169, 68-170, 68-171, 68-173, 68-174, 68-175, 68-199, 68-200, and 68-201 must be submitted on cash bonus basis with a fixed royalty of 16-2/3 percent.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., p.s.t., June 11, 1982, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971). See Item 14, "Information to Lessees."

6. Bid Opening. Bids will be opened on June 11, 1982, beginning at 10:00 a.m., p.s.t., at the second address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, June 11, 1982, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts submitted with a bid may be deposited in a suspense account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

TRACT LIST OCS SALE #68

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6A (REVISED JULY 24, 1967)

Tract	Block No.	Description	Acres
68-001	55N 89W	All	4632.80
68-002	55N 88W	All	4542.04
68-003	55N 87W	All	4451.17
68-004	55N 86W	All	4360.19
68-005	54N 89W	All	5760
68-006	54N 88W	All	5760
68-007	54N 87W	All	5760
68-008	54N 86W	All	5760
68-009	54N 82W	1/	3795.99
68-010	54N 76W	1/	1080.51
68-011	53N 87W	All	5760
68-012	53N 86W	All	5760
68-013	53N 72W	1/	3374.56
68-014	52N 86W	All	5760
68-015	52N 85W	All	5760
68-016	52N 84W	All	5760
68-017	52N 82W	All	5760
68-018	52N 73W	All	5760
68-019	52N 72W	All	5760
68-020	51N 87W	All	5760
68-021	51N 86W	All	5760
68-022	51N 85W	All	5760
68-023	51N 80W	All	5760
68-024	51N 79W	All	5760
68-025	51N 77W	All	5760
68-026	51N 76W	All	5760
68-027	51N 75W	All	5760
68-028	51N 74W	All	5760
68-029	51N 73W	All	5760
68-030	51N 72W	All	5760
68-031	50N 86W	All	5760
68-032	50N 85W	All	5760
68-033	50N 84W	All	5760
68-034	50N 82W	All	5760
68-035	50N 81W	All	5760
68-036	50N 78W	All	5760
68-037	50N 77W	All	5760
68-038	50N 75W	All	5760
68-039	50N 74W	All	5760
68-040	49N 85W	All	5760
68-041	49N 84W	2/	5754.03
68-042	49N 83W	2/	4378.54
68-043	49N 82W	2/	2983.98
68-044	49N 81W	2/	4235.62
68-045	49N 80W	2/	3376.41
68-046	49N 79W	2/	3950.41

(a) Outer Continental Shelf Leasing Maps, Channel Islands Area.

Maps 6A, 6B and 6D sell for \$1.00 each; Map 6C sells for \$2.00.

(b) Outer Continental Shelf Official Protraction Diagram NI 11-10,

San Clemente. This map sells for \$2.00.

12. Tract Descriptions. The tracts offered for bids are as follows:

Note: There may be gaps in the numbers of the tracts listed.

TRACT LIST OCS SALE #68

LEASE MAP NO. 6B (Continued)

Tract	Block No.	Description	Acres
68-115	42N 62W	2/	243.34
68-122	42N 54W	All	5760
68-123	42N 53W	All	5760
68-124	41N 71W,	2/	5091.15
	40N 71W,	2/	
68-125	41N 60W	2/	4864.51
68-128	41N 51W	All	5760
68-129	41N 50W	All	5760
68-131	40N 70W	All	5760
68-132	40N 69W	All	5760
68-136	40N 51W	All	5760
68-137	40N 50W	All	5760
68-138	40N 49W	All	5760
68-139	39N 71W	All	5760
68-140	39N 70W	All	5760
68-141	39N 69W	All	5760
68-145	39N 50W	All	5760
68-146	39N 49W	All	5760
68-147	39N 47W	All	5760
68-148	38N 71W	All	5760
68-149	38N 70W	All	5760
68-150	38N 69W	All	5760
68-151	38N 47W	All	5760
68-152	38N 46W	All	5760
68-153	37N 71W	All	5760
68-154	37N 70W	All	5760
68-155	37N 69W	All	5760
68-156	36N 71W	All	5760
68-157	36N 70W	All	5760
68-158	36N 69W	All	5760
68-159	34N 41W	All	5760
68-160	34N 40W	All	5760
68-161	33N 41W	All	5760
68-162	33N 40W	All	5760
68-163	32N 40W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6C (REVISED APRIL 25, 1977)

68-164	35N 37W,	NE 1/4	4224.52
	35N 36W,	1/	
68-165	35N 38W	1/	5010.92
68-168	34N 39W	All	5760
68-169	34N 36W	All	5760
68-170	33N 39W	All	5760
68-171	33N 38W	All	5760
68-172	32N 39W	All	5760
68-173	32N 37W	All	5760
68-174	32N 35W	All	5760

TRACT LIST OCS SALE #68

LEASE MAP NO. 6A (Continued)

Tract	Block No.	Description	Acres
68-047	49N 74W	All	5760
68-048	48N 85W	All	5760
68-049	48N 84W	2/	4118.04
68-052	48N 73W	All	5760
68-053	48N 72W	2/	5602.12
68-054	47N 84W	2/	1406.43
68-057	40N 73W	2/	975.14
68-058	40N 72W	2/	3410.96
68-059	37N 73W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6B (REVISED JULY 24, 1967)

68-060	53N 71W	1/	965.76
68-061	52N 71W	1/	5753.33
68-068	51N 62W,	1/	2330.91
	NE 1/4,	1/	
68-070	50N 62W	All	5760
68-074	50N 61W,	1/	2657.45
	50N 60W,	1/	
68-078	49N 67W	All	5760
68-079	49N 66W	All	5760
68-080	49N 65W	All	5760
68-081	49N 64W	All	5760
68-082	49N 63W	All	5760
68-083	49N 62W	All	5760
68-084	49N 61W	All	5760
68-085	49N 60W,	1/	4464.47
	49N 59W,	1/	
68-087	48N 71W	2/	3671.80
68-088	48N 70W	2/	3690.13
68-089	48N 69W	2/	4673.60
68-090	48N 68W	2/	5742.67
68-091	48N 67W	All	5760
68-092	48N 66W	All	5760
68-093	48N 65W	All	5760
68-094	48N 64W	All	5760
68-095	48N 63W	All	5760
68-096	47N 59W,	1/	5069
	47N 58W,	1/	
68-101	45N 58W	2/	2688.86
68-105	44N 58W	2/	994.97
68-112	43N 58W	2/	2005.77

TRACT LIST OCS SALE #68

LEASE MAP NO. 6C (Continued)

Tract	Block No.	Description	Acres
68-175	32N 34W	All	5760
68-176	32N 33W	1/	5758.28
68-177	32N 32W	1/	3893.85
68-178	32N 31W	1/	5147.22
	31N 31W	1/	
68-179	31N 30W	All	5760
68-180	31N 30W	All	5760
68-181	31N 30W	All	5760
68-182	31N 34W	All	5760
68-183	31N 33W	All	5760
68-184	31N 32W	All	5760
68-186	30N 37W	All	5760
68-187	30N 32W	All	5760
68-188	30N 31W	All	5760

OCS LEASING MAP, CHANNEL ISLANDS AREA, MAP NO. 6D (APPROVED AUGUST 8, 1966)

Tract	Block No.	Description	Acres
68-195	20N 66W	All	5760
68-196	20N 65W	All	5760
68-197	20N 64W	All	5760
68-198	19N 66W	All	5760
68-199	19N 63W	All	5760
68-200	19N 62W	All	5760
68-201	19N 61W	All	5760
68-202	13N 54W	All	5760
68-203	13N 53W	All	5760
68-204	13N 52W	All	5760
68-205	12N 54W	All	5760
68-206	12N 52W	All	5760
68-207	12N 51W	All	5760
68-208	11N 53W	All	5760
68-209	11N 52W	All	5760
68-210	11N 51W	All	5760
68-211	10N 50W	All	5760
68-212	10N 49W	All	5760
68-213	10N 48W	All	5760

TRACT LIST OCS SALE #68

LEASE MAP NO. 6C (Continued)

Tract	Block No.	Description	Hectares
68-214	N751 E66 (426)	All	325.60
68-215	N751 E67 (427)	All	342.99
68-216	N751 E68 (428)	All	360.34
68-217	N750 E66 (470)	All	2304
68-218	N750 E67 (471)	All	2304
68-219	N750 E68 (472)	All	2304
68-220	N749 E67 (515)	All	2304
68-221	N749 E68 (516)	All	2304

1/ That portion seaward of the Three Geographical Mile Line.

2/ Seaward of straight lines defined by coordinates based on the California (Lambert Plane Coordinate System, Zone 6, with X origin = 2,000,000 at 116° 15', and Y origin = 0.00 at 32° 10'; as follows:

	X	Y
1.	1 083 116.775	659 028.110
2.	1 090 706.145	688.411.986
3.	1 095 458.081	689 505.297
4.	1 089 764.637	706 897.326
5.	1 079 496.859	717 556.263
6.	1 067 952.171	722 765.464
7.	1 049 567.015	723 635.502
8.	1 046 245.123	723 092.415
9.	1 038 155.138	724 350.732
10.	1 032 254.837	724 355.602
11.	1 022 654.512	730 932.219
12.	1 019 326.153	732 622.546
13.	1 013 397.117	736 301.031
14.	989 692.237	739 534.295
15.	983 015.566	738 568.150
16.	968 383.353	732 739.562
17.	957 170.832	737 567.743
18.	936 446.824	743 185.260
19.	933 072.704	743 002.280
20.	928 459.797	743 236.506
21.	925 409.789	744 379.354
22.	915 538.620	747 443.255
23.	910 748.956	748 718.057
24.	899 713.001	750 272.216
25.	886 261.357	751 086.957

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale for tracts 68-132, 68-195, 68-198, 68-204, 68-206, 68-207, 68-208, 68-209, 68-210, 68-218, 68-219, 68-220 and 68-221 will be for an initial term of ten years. All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, Pacific Outer Continental Shelf Office, at the first address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations, the term DMMOFO refers to the Regional Deputy Minerals Manager, Offshore Field Operations, Minerals Management Service, formerly Deputy Conservation Manager, Field Operations, U.S. Geological Survey, and the term Manager refers to the Manager of the Pacific OCS Office of the Bureau of Land Management.

Stipulation No. 1

(a) If the DMMOFO has reason to believe that biological populations or habitats exist and require protection, he shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the DMMOFO and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones.

(2) A species of limited regional distribution that may be adversely affected by any lease operations.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; or (2) establish to the satisfaction of the DMMOFO, on the basis of the site specific survey,

Y

749 810.080
736 934.674
737 775.497
735 696.449
734 113.427
734 813.082
729 901.097
730 515.155
739 918.764
746 523.282
750 484.062
757 339.723
760 722.078
765 047.179
767 604.303
767 054.160
762 837.874
768 088.489
760 297.318
760 677.050
732 206.934
724 689.151
716 183.286
701 481.035
699 142.297
689 391.058
675 677.421
666 264.467
665 081.067
660 536.666
661 054.023
658 108.385
650 753.300
633 994.492
628 782.802
623 445.039
620 503.974
614 161.279
613 631.191
615 467.730
619 149.401
620 378.195
629 382.180
631 622.818
639 091.019
638 113.359
634 751.562
635 433.826
633 861.638
634 162.461
637 824.916
642 187.773
642 167.877
648 497.139
644 365.129
646 451.071
651 576.513
649 650.043
646 868.729
645 566.294
645 430.853
646 218.407
646 989.213
649 236.492
651 053.089

X

878 730.328
859 696.145
852 938.315
839 611.004
831 912.313
816 880.230
801 204.129
796 632.417
789 160.912
779 318.761
777 402.971
771 877.911
767 915.796
760 382.615
740 272.507
737 046.583
727 246.513
713 276.546
703 420.467
684 780.675
670 966.876
671 599.869
674 371.152
686 779.840
690 029.831
692 298.780
701 747.522
723 069.990
735 049.054
748 789.017
764 228.804
769 122.179
772 836.313
779 449.843
792 078.702
799 909.378
804 520.649
820 422.101
830 174.377
840 007.314
848 179.204
851 849.836
872 385.591
885 199.943
897 823.727
901 394.249
925 712.146
931 467.929
939 736.895
956 778.905
966 837.459
975 764.663
985 465.332
988 933.297
999 386.345
1 008 333.302
1 019 643.123
1 026 037.610
1 037 229.744
1 042 340.607
1 049 479.392
1 055 695.598
1 058 718.100
1 065 052.124
1 068 364.568

cultural resource until the DMMOFO has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DMMOFO and make every reasonable effort to preserve and protect the cultural resource from damage until the DMMOFO has given directions as to its preservation.

Stipulation No. 3

(To be included in any lease resulting from this sale for tracts: 68-6, 68-7, 68-8, 68-9, 68-11, 68-12, 68-13, 68-14, 68-18, 68-19, 68-21, 68-25, 68-26, 68-27, 68-28, 68-29, 68-30, 68-34, 68-35, 68-36, 68-37, 68-38, 68-39, 68-44, 68-45, 68-52, 68-53, 68-59, 68-60, 68-61, 68-68, 68-82, 68-83, 68-84, 68-85, 68-101, 68-105, 68-123, 68-128, 68-129, 68-137, 68-147, 68-139, 68-160, 68-162, 68-163, 68-168, 68-170, 68-171, 68-172, 68-173, 68-174, 68-175, 68-176, 68-177, 68-178, 68-182, 68-183, 68-184, 68-187, 68-188, 68-199, 68-205, 68-208, 68-209, 68-220, and 68-221.)

All or portions of this tract may contain mass transport deposits, steep slopes, or active faulting. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the DMMOFO's satisfaction that mass transport of sediments or faulting is unlikely, or that exploratory drilling operations, structures (platforms), casing, wellheads, and pipelines can be safely designed to protect the environment in case such mass transport or faulting occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of instability, either within or outside of this lease block.

If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for faulting and mass transport of sediments. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed, all active faults or mass transport deposits in the lease block must be mapped. The DMMOFO may also require soil testing before exploration and production operations are allowed.

Stipulation No. 4

(This stipulation applies to the following tracts located in military operating areas: 68-1 through 68-39, 68-57, 68-58, 68-59, 68-101, 68-105, 68-112, 68-125, 68-128 through 68-132, 68-136 through 68-141, 68-145 through 68-188, and 68-195 through 68-221.) The military facilities listed below are located as follows: the Western Space and Missile Center (WSMC), Vandenberg AFB, Lompoc, California; the Pacific Missile Test Center (PMTTC), Pt. Mugu, California; and the Fleet Area Control

either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The DMMOFO will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the DMMOFO has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DMMOFO, and make every reasonable effort to preserve and protect the biological resource from damage until the DMMOFO has given the lessee directions with respect to its protection.

Stipulation No. 2

If the DMMOFO has reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, and gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indicators are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the DMMOFO and the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the DMMOFO, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the DMMOFO, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the DMMOFO and the Manager for their review. Should the DMMOFO determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such

Stipulation No. 5

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center (WSMC), the Pacific Missile Test Center (PMTTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 6

(To be included only in leases resulting from this sale for tracts 68-101, 68-105, 68-112, 68-125, 68-164, 68-169, 68-204, 68-207, 68-212 and 68-213.)

No structures or drilling rigs will be allowed within the portions of the tracts described below because of Department of Defense activities.

Tract No.	Restricted Portion
68-101	S1/2NE1/4, SE1/4
68-105	E1/2NE1/4
68-112	South and East of a diagonal line from NE corner to SW corner
68-125	South and East of a diagonal line from NE corner to SW corner

and Surveillance Facility (FACSFAC), San Diego, California. Another contact is the Long Beach Naval Shipyard, Long Beach, California, which applies to tracts 68-164 and 68-169.

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the DNMOPF, after consultation with the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed 72 hours; however, any such suspension may be extended by order of the DNMOPF. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency, to the degree necessary to prevent damage to, or unacceptable interference with Department of Defense flight, testing or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

68-164 (35N36W only)

W1/2E1/2E1/2, W1/2E1/2,
E1/2E1/2W1/2 (Federal portions
only)
W1/2E1/2W1/4, W1/2E1/4,
E1/2W1/4
N1/4
E1/2
N1/2
N1/2

68-169

68-204
68-207
68-212
68-213

Stipulation No. 7

(a) Pipelines will be required: 1) if pipeline rights-of-way can be determined and obtained; 2) if laying of such pipelines is technologically feasible and environmentally preferable; and 3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local governments and the industry.

(b) Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the DMMOFO.

(c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Port and Tanker Safety Act of 1978 (33 U.S.C. 1221 et seq.)

Stipulation No. 8

(a) Wells. Subsea well heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structure without snagging or otherwise damaging the structures or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the DMMOFO. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least +50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth surface design. In the event that an

irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 9

This stipulation shall be effective for each tract to which it applies only if the Secretary of the Interior and the Governor of the State of California, prior to the approval of a development and production plan for that tract by the Department of the Interior, enter into an agreement pursuant to section 8(g) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. section 1337(g). If such agreement has been entered into, this stipulation is to be applied to leases resulting from this sale for the following tracts: 68-9, 68-10, 68-13, 68-17, 68-18, 68-19, 68-60, 68-61, 68-68, 68-74, 68-83, 68-84, 68-85, 68-121, 68-123, 68-128, 68-129, 68-159, 68-160, 68-163, 68-164, 68-165, 68-169, 68-176, 68-177, 68-178, 68-179, 68-183, 68-184, 68-187, and 68-188.

(1) No producing well may be drilled where the well bore in the producing intervals is closer to the seaward boundary of the State of California than the distance agreed to between the State and the Department based on analysis of pertinent site-specific data, except that in no event shall the agreed distance be further than 750 feet from the seaward boundary of the State. In the absence of an agreed distance, no well shall be drilled closer than 500 feet to the seaward boundary of the State.

(2) The constraint in paragraph (1) shall not apply:

(a) If oil or gas pools or fields underlying both the Outer Continental Shelf and lands subject to the jurisdiction of California are included in a production unit entered into by the relevant lessees and approved by the lessors, or in a production unit entered into by the Federal lessee and the State of California when it is a carried, non-operating owner.

(b) If, in the absence of a production unit as described in (a) above, the State of California permits production from State lands from a point closer than 750 feet from the Federal-State boundary. In the event that such production from State lands does occur, the Federal lessee shall be allowed to produce from offset wells equally close to the boundary in the area of Federal jurisdiction.

14. Information to Lessees.

(a) The Department of the Interior will seek the advice of the State of California and other Federal agencies to identify areas of special biological or cultural resources.

(b) Operations on some of the tracts offered for lease may be restricted by designation of fairways, precautionary zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq).

(c) Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

(d) Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(e) Notice is hereby given that portions of tracts 68-3, 68-4, 68-7, 68-8, 68-15, 68-32, 68-34, 68-35, 68-36, 68-70, 68-112, 68-128, 68-129, 68-137, 68-138, 68-146, 68-151, 68-159, 68-163, 68-168, 68-170, 68-171, 68-172, 68-175, 68-180, 68-181, 68-182, 68-186, 68-202, 68-206, 68-207, 68-209, and 68-213 may contain a shallow "bright spot" seismic amplitude anomaly which may be indicative of a shallow gas deposit.

Surface occupancy above this anomaly and drilling through the anomaly will not be allowed unless or until the lessee has demonstrated to the DMOFO's satisfaction that a potentially hazardous accumulation of shallow gas does not exist or that exploratory drilling operations, structures (platforms), casing, and wellheads can be placed or drilling plans designed to assure safe operations in the area above

the anomaly. This may necessitate that all exploration for and development of oil and gas be performed from locations outside the area of concern, either within or outside this lease block.

(f) Lessees are encouraged to include a fisheries training program in their exploration and development plans. This training program should be designed to familiarize platform and shore-based supervisors and persons involved in vessel operations with the value of the commercial fishing industry, the methods of offshore fishing operations, and the potential hazards, conflicts, and impacts resulting from offshore oil and gas activities. This program should be formulated and implemented by qualified and experienced instructors in fishing activities, methods of communication, and navigational safety.

(g) For those tracts listed in paragraph 13 above providing for leases with an initial period of more than 5 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to Minerals Management Service either an exploration plan or a general statement of exploration intentions prior to the end of the ninth lease year.

(h) Bidders are advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate.

(i) Revisions of Department of Labor regulations on Affirmative Action requirements for Government Contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register

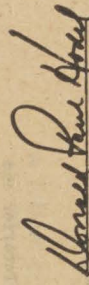
of August 25, 1981, at 46 FR 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, Section 18 of the lease form, Form 3300-1 (September 1978), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action Forms described in paragraph 5 of this notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

(j) Pending the issuance of revised versions of Forms 1140-7 and 1140-8 by the Bureau of Land Management, submission of Form 1140-7 (December 1971) and Form 1140-8 (November 1973) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action Forms.

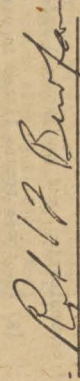
(k) Lessees are directed to consult with the Coast Guard prior to any activity on Tract 68-165 in order to insure navigational safety and compatibility with OCS operations. Any lease that is issued will prohibit a lessee from surface occupancy or other activities which would, in the opinion of the Coast Guard, create a hazard to vessel traffic.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

Approved: MAY 7 1982


Acting Secretary of the Interior

[FR Doc. 82-12905 Filed 5-11-82; 8:45 am]
BILLING CODE 4310-84-C


Director, Bureau of Land Management

4310-84

UNITED STATES

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf
Southern California

Notice of Leasing Systems, Sale No. 68

Sec. 8(a)(8) (43 U.S.C. 1337 (a)(8)) of the Outer Continental Shelf (OCS) Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

- (A) identifying the bidding systems to be used and the reasons for such use; and
- (B) designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

A. Bidding systems to be used. In OCS Sale No. 68, tracts will be offered under the following two bidding systems as authorized by Sec. 8(a)(1) (43 U.S.C. 1337 (a)(1)): (1) bonus bidding with a fixed 16-2/3 percent royalty on 55 tracts, and (2) bonus bidding with a fixed 12-1/2 percent royalty on 109 tracts.

(1) Bonus Bidding with a 16-2/3 Percent Royalty. This system is authorized by Sec. (8) (a)(1)(A) of the OCS Lands Act, as amended. This system has been used extensively since the passage of the OCS Lands Act in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end payments required may encourage rapid exploration.

(2) Bonus Bidding with a 12-1/2 Percent Royalty. This system is authorized by Sec. (8) (a)(1)(A) of the OCS Lands Act, as amended. This system has been chosen for certain deep water tracts proposed for Sale 68 because these tracts are expected to require substantially higher exploration, development, and production costs, as well as longer times

before initial production, in comparison to shallow water tracts. DOI analyses indicate that the minimum economically developable discovery on a tract in such deepwater areas under a fixed 12-1/2 percent royalty system would be less than for the same tracts under a 16-2/3 percent royalty system. As a result, more tracts may be explored and developed. In addition, the lower royalty rate system is expected to yield more rapid production rates and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary restraints to competition.

(B) Designation of Tracts. The selection of tracts to be offered under the two systems was based on the following factors:

- (1) Lease terms on adjacent tracts were considered in order to reduce administrative costs and barriers to unitization, and to enhance orderly development of each field.
- (2) All tracts in water depths of 400 meters or greater were selected for 1/8 royalty based on the favorable performance of this system in these high cost areas.

The specific tracts to be offered under each system are as follows:

- (a) Bonus Bidding with a 16-2/3 Percent Royalty--Tracts 68-9 and 68-10, 68-13, 68-17, 68-23 and 68-24, 68-57 through 68-61, 68-68, 68-70, 68-74, 68-78 through 68-85, 68-90 through 68-96, 68-101, 68-124, 68-131, 68-139 and 68-140, 68-148 through 68-150, 68-153 through 68-158, 68-164 and 68-165, 68-168 through 68-171, 68-173 through 68-175, and 68-199 through 68-201.
- (b) Bonus Bidding with a 12-1/2 Percent Royalty--All remaining tracts.

Approved: MAY 7 1982

Donald R. Hodel
Secretary of the Interior

Robert F. Burford
Director, Bureau of Land Management

[FR Doc. 82-12906 Filed 5-11-82; 8:45 am]

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Federal Register

Wednesday
May 12, 1982

Part VIII

General Services Administration

ADP Services Contracting; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 1-1, 1-4, and 1-7

[FPR Amendment 220]

ADP Services Contracting

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This Amendment adds a new Subpart 1-4.12, Procurement and Contracting Government-wide for Automatic Data Processing Services. The purpose is to provide uniform provisions for agency acquisition of ADP services. The intended effect is to enhance economy, efficiency, and competition in these acquisition actions.

EFFECTIVE DATE: October 1, 1981.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Federal Procurement Regulations Directorate, Office of Acquisition Policy, 703-557-8947.

SUPPLEMENTARY INFORMATION: (a) A proposed addition of Subpart 1-4.12 was circulated to all Federal agencies and other interested parties on January 28, 1981. A notice of the availability of the proposal was published (46 FR 10921, February 5, 1981). The closing of the comment period was March 28, 1981. All comments received have been considered and accommodated to the extent considered appropriate.

(b) The primary change from the proposal is to redefine "ADP related services" as "ADP support services", as they relate to the exclusive procurement authority of GSA. Modifications were also made from the proposal to make it clear that management of resources, including sharing, are not changed. Likewise, contracting arrangements such as the TSP (Teleprocessing Services Program) continue to include the ADP support services area.

(c) A new Subpart 1-4.12 is added. A section-by-section explanation follows:

(1) Section 1-4.1200 indicates that Subpart 1-4.12 provides for Government-wide coverage of ADP services and ADP support services. Telecommunications is now covered by FPR Temporary Regulation 51 with provisions identified in the 1-4.12 series. Proposed codification (Subpart 1-4.13) of the temporary regulation will involve changing those sections identifying numbers as well.

(2) Section 1-4.1200-1 provides guidance identifying FPMR provisions applicable to ADP services.

(3) Section 1-4.1200-2 cites the statutory authority for the procurement provisions of the subpart, the fiscal and

policy control roles of the Office of Management and Budget, and the relationship to Government Printing and Binding Regulations.

(4) Section 1-4.1200.3 recognizes the special statutory concern for privacy of individuals as it relates to ADP services.

(5) Section 1-4.1200-4 provides that individual (as well as class) deviation authority for the subpart is retained by the Administrator of General Services or his GSA delegate(s) (not other agencies). Section 1-1.009-3 is revised accordingly. Section 1-4.1100-3 is amended to be consistent with this § 1-4.1200-4.

(6) Section 1-4.1201 sets forth applicability provisions including the special circumstances when ADPE or software items under ADP services contracting are subject to FPR provisions.

(7) Section 1-4.1202 contains definitions of terms used in the subpart.

(8) Section 1-4.1203 contains agency contracting authorization provisions, including reference to sharing requirements and to specific or specialized sources of supply. The blanket authority thresholds established in FPMR Temporary Regulation F-495 for ADP services are continued. A new provision states that agencies do not require GSA approval to procure commercial ADP support services.

(9) Section 1-4.1203-1 sets forth agency procurement request (APR) provisions. There is no requirement to use the GSA Form 2068 for this purpose. It should be noted that the trial period still continues for the alternative APR submission procedure as reflected in GSA Bulletin FPMR F-126 dated November 4, 1980 (45 FR 84151, December 22, 1980).

(10) Section 1-4.1204 describes the regulatory framework for ADP services contracting including the relationship of the subpart to other procurement regulations.

(11) Section 1-4.1205 provides a reference to acquisition alternatives for purchases under \$10,000.

(12) Section 1-4.1206 establishes a general policy regarding the continuing requirement for competition. It recognizes a direct linkage of responsibility between agency ADP managers and contracting personnel.

(13) Section 1-4.1206-1 establishes the requirement for agency planning of future requirements in the light of existing contract expirations.

(14) Section 1-4.1206-2 establishes a requirement that agencies conduct software conversion studies (supersedes FPMR Temp. Reg. F-496 requirements). Section 1-4.1109-13 is revised accordingly.

(15) Section 1-4.1206-3 establishes solicitation requirements when dedicated ADPE and software alternatives are to be considered.

(16) Section 1-4.1206-4 establishes requirements regarding the use in solicitations of compatibility limited requirements.

(17) Section 1-4.1206-5 sets forth noncompetitive requirement documentation provisions.

(18) Section 1-4.1206-6 establishes requirement for an agency evaluation before exercising renewal options.

(19) Section 1-4.1206-7 sets forth provisions regarding remote terminal emulation, replacing FPR Temp. Reg. 49 and Supp. 1 thereto.

(20) Section 1-4.1206-8 contains provisions regarding small business and labor surplus area concerns.

(21) Section 1-4.1206-9 establishes computer security requirements.

(22) Section 1-4.1206-10 provides for implementation of standards.

(23) Section 1-4.1208 provides Privacy Act provisions supplemental to general coverage appearing at § 1-1.327. Sections 1-4.1208-1 and 1-4.1208-2 contain required contract clauses regarding privacy. Section 1-7.103-30 is revised accordingly. Section 1-1.327-1 is revised to provide a reference to this section.

(24) Section 1-4.1209 describes GSA's Teleprocessing Service Program (TSP), and requires agency use of the program. (Supersedes FPMR Temporary Regulation E-47 requirements).

(25) Section 1-4.1209-1 sets forth the applicability of the TSP.

(26) Section 1-4.1209-2 sets forth the scope of the TSP.

(27) Section 1-4.1209-3 provides procedures for acquiring TSP services including description and authorization, evaluation and source selection, low cost procurement, and exceptions.

(28) Section 1-4.1209-4 provides for GSA review of selections under the TSP.

(29) Section 1-4.1210 provides for agency use of GSA regional contracts.

(30) Section 1-4.1211 sets forth provisions regarding the Federal Conversion Support Center (FCSC).

(31) Section 1-4.1212 sets forth provisions regarding the Federal Computer Performance Evaluation and Simulation Center (FEDSIM).

(32) Section 1-4.1213 sets forth provisions regarding the Federal Compiler Testing Center (FCTC).

(d) This amendment cancels FPR Temporary Regulation 49, April 4, 1979, and Supplement 1 to Temp. Reg. 49, February 21, 1980. This amendment supersedes the following FPMR provisions that will be canceled by

concurrent regulatory action: FPMR §§ 101-35.1705 and 101-35.1706; FPMR § 101-36.203-2 as changed by FPMR Temporary Regulation F-495; FPMR Temporary Regulation E-47 and Supplements 6 and 7 thereto; and FPMR Temporary Regulation F-496, December 2, 1980. (FPMR Temporary Regulation F-492, October 18, 1979, was canceled by F-496.) FPMR § 101-36.203-1 as amended by FPMR Temporary Regulation F-495 remains in effect. The TSP Handbook edition announced by GSA Bulletin FPR 39 will be revised to reflect the provisions of this amendment and will be announced by a superseding GSA FPR bulletin.

List of Subjects in 41 CFR Part 1-4

Government procurement, ADP services.

PART 1-1—GENERAL

Subpart 1-1.0—Regulation System

Section 1-1.009-3 is revised to recognize the addition of Subpart 1-4.12 as follows:

§ 1-1.009-3 Limitation on deviations.

Section 1-1.009-2, above, does not apply to the provisions of Subpart 1-4.11, Procurement and Contracting for Government-wide Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies and Subpart 1-4.12, Procurement and Contracting Government-wide for Automatic Data Processing Services. Pursuant to 40 U.S.C. 759 (Section 111 of the Federal Property and Administrative Services Act of 1949, as amended; Pub. L. 89-306) the Administrator of General Services is authorized to coordinate and provide for the purchase, lease, and maintenance of automatic data processing equipment by Federal agencies as well as other matters relating to automated data management services. The exercise of the authority to procure and deviations from regulatory requirements shall be accomplished as specified in Subparts 1-4.11 and 1-4.12.

Subpart 1-1.3—General Policies

Subpart 1-1.327-1 is revised to provide a reference to supplemental provisions contained in § 1-4.1208 as follows:

§ 1-1.327-1 General.

This section implements the Privacy Act of 1974 (Pub. L. 93-579, December 31, 1974, 5 U.S.C. 552a) and OMB Circular No. A-108, July 9, 1975. In enacting this legislation, Congress stated that "the right to privacy is a personal and fundamental right protected by the

Constitution of the United States." The Privacy Act concerns rights of a citizen or a resident alien under the Act and does not extend to the rights of proprietorships in their business capacity, partnerships, businesses, or corporations. Section 1-4.1208 supplements the provisions of this § 1-1.327 in regard to commercial automatic data processing services.

PART 1-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

The table of contents for Part 1-4 is amended by adding the title and contents of Subpart 1-4.12 as follows:

* * * * *

Subpart 1-4.12 Procurement and Contracting Government-Wide for Automatic Data Processing Services

Sec.

1-4.1200 Scope of subpart.

1-4.1200-1 Relationship to the Federal Property Management Regulations (FPMR).

1-4.1200-2 Relationship to other procurement authority.

1-4.1200-3 Relationship to protection of the privacy of individuals.

1-4.1200-4 Deviations.

1-4.1201 Applicability.

1-4.1202 Definitions.

* 1-4.1202-1 ADP services.

1-4.1202-2 ADP support services.

1-4.1202-3 Commercial ADP services and commercial ADP support services.

1-4.1202-4 Commercial ADP services and support services subject to the Privacy Act.

1-4.1202-5 Threats and hazards—Privacy Act.

1-4.1202-6 Safeguards—Privacy Act.

1-4.1202-7 Dedicated teleprocessing system.

1-4.1203 Authorization for commercial ADP services contracting.

1-4.1203-1 Agency Procurement Request (APR) submissions.

1-4.1204 Procurement-related directives.

1-4.1205 Small purchases.

1-4.1206 Competition in procurement actions.

1-4.1206-1 Competition for follow-on ADP services requirements.

1-4.1206-2 Software conversion studies.

1-4.1206-3 Dedicated ADPE or software alternatives.

1-4.1206-4 Compatibility limited requirements.

1-4.1206-5 Noncompetitive (sole source) requirements.

1-4.1206-6 Exercising renewal options.

1-4.1206-7 Use of remote terminal emulation for ADP services procurements.

1-4.1206-8 Small business and labor surplus area concerns.

1-4.1206-9 Computer security requirements.

1-4.1206-10 Implementation of standards.

1-4.1207 [Reserved]

1-4.1208 Procurement requirements relating to the Privacy Act.

1-4.1208-1 Rights in privacy safeguards.

Sec.

1-4.1208-2 Access to contractor facilities and records—privacy safeguards inspection.

1-4.1209 The Teleprocessing Services Program (TSP).

1-4.1209-1 Applicability of the TSP.

1-4.1209-2 Scope of the TSP.

1-4.1209-3 Procedures for acquiring TSP services.

1-4.1209-4 GSA review of selections under the TSP.

1-4.1210 Agency use of GSA regional contracts.

1-4.1211 Federal Conversion Support Center (FCSC).

1-4.1212 Federal Computer Performance Evaluation and Simulation Center (FEDSIM).

1-4.1213 Federal Compiler Testing Center (FCTC).

Subpart 1-4.11—Procurement and Contracting Government-Wide for Automatic Data Processing Equipment, Software, Maintenance Services, and Supplies

§ 1-4.1100-3 [Amended]

1. Section 1-4.1100-3 is amended to be consistent with § 1-4.1200-4 by removing paragraph (c).

2. Section 1-4.1103-1 is revised to broaden the general policy on competition to include subsequent procurement as follows:

§ 1-4.1103-1 Competition.

(a) Full and open competition is a basic procurement objective of the Government. The maximum practicable competition among offerors who are capable of meeting the user's needs will ensure that the Government's ADP needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. To meet fully the lowest overall cost objective, it is essential that proper management and planning actions be accomplished before the acquisition becomes imminent (see FPMR Subpart 101-35.2).

(b) Agency ADP managers and contracting officers share the responsibility for ensuring that the basic procurement objective is met. This responsibility extends to fostering competitive conditions for subsequent procurements.

3. Section 1-4.1109-13 is amended to make paragraph (c)(1)(ii) consistent with new § 1-4.1206 and add paragraph (c)(4) as follows:

§ 1-4.1109-13 Software Conversion Studies.

* * * * *

(c)(1) * * *

(i) * * *

(ii) The cost of conversion is to be used as the primary justification for a compatibility limited requirement when

the estimated value of the procurement exceeds \$300,000.

(2) * * *

(4) A comprehensive software conversion study means an analysis of a conversion requirement that as a minimum includes the following: (i) Problem definition; (ii) inventory of system components for the current system; (iii) description of the operating system environment; (iv) inventory of application programs and data files to be converted; (v) alternative procurement approaches (including compatible and noncompatible, as appropriate) with schedules for both the procurement and conversion effort; (vi) general description of the target environment (including hardware and system software, performance requirements, and constraints or limitations, dictated by the user needs, on the functional definition of the requirement); (vii) recommended approach to accomplish the conversion tasks (including analyses of alternative approaches with an economic and benefit analysis for each approach); and (viii) specific agency actions to be taken to reduce the cost and risk of future conversions.

4. Section 1-4.1109-14 is amended to remove an unintended reference to CODASYL specifications in paragraph (a)(2) as follows:

§ 1-4.1109-14 Determination of conversion costs.

(a) * * *

(1) * * *

(2) Conversion of data bases, data base design changes, and data base management systems to the extent necessary to permit the continued use of existing application software;

* * *

Subpart 1-4.12 is added as follows:

Subpart 1-4.12—Procurement and Contracting Government-Wide for Automatic Data Processing Services

§ 1-4.1200 Scope of subpart.

This subpart sets forth policies and procedures governing the procurement of commercially available automatic data processing (ADP) services and support services by Federal agencies (see § 1-4.1102-18 for definition) and by Government contractors as directed by agencies.^{1 2}

¹ Subparts 1-4.11 and 1-4.12 contain provisions regarding established GSA sources of supply.

² Subparts 1-4.11 sets forth policies and procedures governing the procurement of automatic data processing equipment (ADPE), commercially available software, maintenance services, and related supplies by Federal agencies.

§ 1-4.1200-1 Relationship to the Federal Property Management Regulations (FPMR).

(a) Part 101-35 of the FPMR (41 CFR Part 101-35) sets forth policies and procedures relating to the management of ADP resources including ADP services and support services by Federal agencies. Provisions covering privacy and security are included in Subparts 101-35.17 and 101-35.3, respectively.

(b) Part 101-36 of the FPMR provides detailed policies, procedures, and guidelines pertaining to Government-wide management of ADP equipment, software, and services, including the revolving fund, resources utilization including sharing, reutilization of equipment, multiuser data processing centers, and application of Federal standards. Federal agencies shall not select and acquire ADP services and ADP support services from commercial sources unless those agencies first determine that the required ADP capability cannot be met satisfactorily by using existing Federal ADP resources or established mandatory contractual resources (see also FPMR Subpart 101-36.2).

(c) The provisions of Part 101-37 of the FPMR are applicable to telecommunications associated with ADP services or equipment systems.

(d) Collectively Subparts 101-35, 101-36 and 101-37 comprise Subchapter F of the FPMR.

§ 1-4.1200-2 Relationship to other procurement authority.

(a) Under section 111 of the Federal Property and Administrative Services Act of 1949, 79 Stat. 1127, as amended, (40 U.S.C. 759), the Administrator of General Services has authority to coordinate and provide for the purchase, lease, and maintenance of automatic data processing equipment by Federal agencies as well as other matters relating to the management of Federal ADP. This authority applies to the procurement of commercially available ADP services for a Federal agency as specified in this subpart.

(b) Section 111(g) of the Property Act (40 U.S.C. 759, Pub. L. 89-306) provides that the Administrator's authority is subject to the fiscal and policy control of the Office of Management and Budget (OMB). When an agency submits matters to the OMB for review and decision and the matters relate to the procurement and contracting for commercially available ADP services, the agency shall provide GSA with copies of related documents as provided in FPMR § 101-36.001.

(c) The procurement of printing services, including those services utilizing computer technology, is subject

to the provisions of 44 U.S.C. 502 and the Government Printing and Binding Regulations prescribed by the Joint Committee on Printing (JCP) rather than this regulation. The procurement of certain ADPE is subject to both Subpart 1-4.11 and JCP regulations.

§ 1-4.1200-3 Relationship to protection of the privacy of individuals.

(a) Section 1-1.327 (or, if applicable, DAR 1-327) sets forth procurement and contracting provisions that are required when an executive agency contracts for the design, development, operation, or maintenance of a system of records on individuals to accomplish an agency function. Definition, statutory requirements applicability, and procedures, including contract clauses, are provided.

(b) Paragraph 5c(7) of OMB Circular A-108 (40 FR 28948, July 9, 1975) provides that the Administrator of General Services is responsible for issuing procurement regulations that require executive agencies to review all proposed ADP equipment and ADP services procurements to assure compliance with applicable provisions of the Privacy Act of 1974 (Pub. L. 93-579, December 31, 1974; 5 U.S.C. 552a). Procurement regulations applicable to ADP services and ADP support services are set forth in this Subpart 1-4.12.

§ 1-4.1200-4 Deviations.

Deviations (see requirements in § 1-1.009-1) from this subpart shall be kept to a minimum and controlled as follows:

(a) The head of each agency conducting a procurement action authorized under this subpart shall prescribe a formal agency procedure for the control of requests for deviations from this subpart. A copy of this procedure shall be provided upon request to the General Services Administration (CPE), Washington, DC 20405.

(b) Individual deviations may be authorized only by the Administrator of General Services or the officers designated by the Administrator for this purpose. Class deviations may be authorized only by the Administrator. In each instance the request shall disclose the nature of and the reasons for the deviation. Requests for deviations shall be forwarded to the General Services Administration (CPS), Washington, DC 20405.

§ 1-4.1201 Applicability.

(a) The policies and procedures set forth in this subpart apply to all procurements by Federal agencies that have as their very subject matter the

supplying of commercial ADP services or support services to a Federal agency. However, agencies do not require GSA approval (see § 1-4.1203(c)) to procure commercial ADP support services (but see §§ 1-4.1211, Federal Conversion Support Center (FCSC), 1-4.1212, Federal Computer Performance Evaluation and Simulation Center (FEDSIM), and Federal Compiler Testing Center (FCTC)).

(b) This subpart does not apply to procurements that have as their very subject matter the delivery of items or the performance of services other than ADP services or ADP support services to a Federal agency, even though ADP services or ADP support services are involved in contractor performance. However, if it is operationally feasible to sever the ADP services or ADP support services requirements from the overall requirement, these requirements shall be severed and procured in accordance with this subpart if this action will promote economy, efficiency, and maximum practicable competition.

(c) The provisions of this subpart are not applicable to contractor acquisition of ADP services or ADP support services for its own account in the performance of a Government contract. Procedures for acquisition of ADPE or commercially available software by contractors providing ADP services are contained in § 1-4.1101(b).

(d) The provisions of this subpart are not applicable to employment of experts and consultants pursuant to 5 U.S.C. 3109 or "personal services" contracting.

(e) Regarding the use of GSA sources by grantees, see the prohibition in § 1-5.900.

§ 1-4.1202 Definitions.

The terms used in this subpart have the following meanings.

§ 1-4.1202-1 ADP services.

"ADP services" means the computation or manipulation of data by computers in support of administrative, financial, communicative, scientific, and other similar Federal agency data processing applications. This term includes teleprocessing (including remote batch) and local batch processing.

§ 1-4.1202-2 ADP support services.

"ADP support services" means services, except maintenance services (see § 1-4.1102-4), that are adjunct and essential to agency ADP activities but do not involve the actual computation or manipulation of data by a computer. This term includes source data entry, computer output microfilming, conversion, training, studies, facilities

management of Government furnished ADP equipment, systems analysis and design, programming, equipment operation, and computer performance evaluation.

§ 1-4.1202-3 Commercial ADP services and commercial ADP support services.

(a) "Commercial ADP services" means the performance of ADP services by contractors.

(b) "Commercial ADP support services" means the performance of ADP support services on a nonpersonal services basis.

§ 1-4.1202-4 Commercial ADP services and support services subject to the Privacy Act.

"Commercial ADP services and support services subject to the Privacy Act" means those ADP services and ADP support services performed by Government contractors in connection with the operation by or on behalf of any executive agency of a system of records on individuals to accomplish an agency function from which information is retrieved by the name of an individual or some identifying number, symbol, or other identifying particular assigned to the individual. Therefore, the requirement is subject to the Privacy Act of 1974 (Pub. L. 93-579, December 31, 1974; 5 U.S.C. 552a) (see also OMB Circular No. A-108, July 9, 1975, policies and guidelines).

§ 1-4.1202-5 Threats and hazards—Privacy Act.

"Threats and hazards" means man-made or natural events, the occurrence of which may result in the loss, alteration, or unauthorized access to data in a system of records on individuals to accomplish an executive agency function subject to the Privacy Act.

§ 1-4.1202-6 Safeguards—Privacy Act.

"Safeguards" means those procedures, methods, and devices that have as their specific function the prevention or mitigation of the effects of threats and hazards to a system of records on individuals to accomplish an executive agency function subject to the Privacy Act.

§ 1-4.1202-7 Dedicated teleprocessing system.

"Dedicated teleprocessing system" means the totality of an ADP resource system, or specified ADP resource subsystems thereof, of a teleprocessing system that is specifically reserved and priced on the basis of exclusive use by a single Government user or group of users. The term includes the ADPE configuration, operating system,

supporting software, application library and supporting communications interface(s), but normally excludes the data communication network that may be shared.

§ 1-4.1203 Authorization for commercial ADP services contracting.

(a) Federal agencies are required to comply with the provisions of the Government-wide ADP sharing program before contracting for commercial ADP services or support services (see FPMR Subpart 101-36.2). Each GSA region operates an ADP sharing exchange to provide information and referrals. Information is likewise available concerning (1) prison-made and products of the blind and other severely handicapped (see Subparts 1-5.4 and 1-5.8) and (2) GSA-sponsored Federal Data Processing Centers (FDPC) offering specific or specialized ADP services or support services, some of which must be used by Federal agencies for certain requirements (see also §§ 1-4.1211 and 1-4.1212).

(b) GSA enters into commercial ADP services and support services contract arrangements that are available for Federal agency use. The major nationwide program for certain commercial ADP services including related support services is the Teleprocessing Services Program (TSP). Section 1-4.1209 describes the scope of the TSP, including requirements for agency use. GSA has also established ADP support services contracts that are available for use by agencies only within specified geographic regions and require the prior establishment of agency/GSA regional memorandums of understanding concerning use. Information concerning these contracts is available from GSA/ADTS regional offices.

(c) Agencies do not require GSA approval to procure commercial ADP support services. However, agencies shall comply with requirements regarding the sharing or use of existing Federal ADP resources or sources of supply.

(d) Agencies may procure commercial ADP services without prior approval of GSA provided:

(1) The requirements regarding the sharing or use of existing Federal ADP resources or sources of supply are complied with, and

(2) The value of the procurement does not exceed (i) \$300,000 per year for a competitive procurement or (ii) \$50,000 per year for a sole source procurement. Requirements shall not be fragmented to avoid these dollar thresholds.

(e)(1) When the value of the procurement exceeds the thresholds set forth in paragraph (d) of this section including instances when a value previously estimated below the thresholds subsequently exceeds them, the agency shall submit an agency procurement request (APR) in accordance with § 1-4.1203-1.

(2) Based on the APR submission for ADP services, GSA will:

(i) Conduct the procurement for the agency and the division of responsibility between the requesting agency and GSA as set forth in §§ 1-4.1106-1 and 1-4.1106-2, or

(ii) Authorize the agency to proceed with the procurement. In consummating the procurement, agencies shall comply with applicable regulatory provisions and, in particular, §§ 1-1.301-1 and 1-1.302-1 or, if applicable, Defense Acquisition Regulation (DAR) 1-300.1 and 1-302.2 relating to competition.

(3) GSA will act within 20-workdays after receiving full information from an agency submitting an APR or supplemental APR data. To establish a common understanding of the 20-workday period, GSA will provide within this period written verification that identifies the date of receipt of an APR or supplemental APR data to the agency concerned. When the 20-workday period (plus 5 calendar days for mail lag) has expired, the agency concerned may proceed with the procurement as though it had, in fact, received an authorization.

(4) If GSA finds, after review, that the APR does not contain the information required or that unusual circumstances surrounding the procurement dictate that a longer appraisal period will be required, GSA will provide within the 20-workday period written notice to that effect including an estimate of the time required to complete the review. Under these circumstances the automatic authorization rule as set forth in paragraph (e)(3) of this section shall not apply.

(5) Agency APR submissions to GSA are not required when an agency intends to exercise a renewal option within the system life of a previous authorization.

(f) The authorization to proceed may be used under the following conditions to provide for changes to requirements (including equipment and software specifications) to meet increased data processing requirements, increase economy or efficiency, improve performance, or save energy. The changes shall be within the scope of a changes provision in the contracting arrangement (including the TSP purchase order under the MAS or

contract using the BA). Any changes shall be within the system life of the requirement as specified in the APR. Increased requirements beyond 25 percent of those specified in the contract (including contractually specified options) shall be deemed requirements outside the scope of this paragraph and shall require a new APR submission. The agency shall be responsible for determining the need for and the nature of benchmark changes or reruns necessary to evaluate and price the proposed actions.

§ 1-4.1203-1 Agency procurement request (APR) submissions.

If an agency determines that the conditions of a contemplated procurement are not covered by paragraph (d) of § 1-4.1203, or if the conditions of the contemplated procurement change during the procurement process in such a manner as to remove it from those provisions, two copies of the Agency Procurement Request (APR) and other applicable documents shall be forwarded to the General Services Administration (GSA), Washington, DC 20405. The APR shall include, as applicable:

(a) *Agency information.* Agency name, address, names and telephone numbers of appropriate technical and contracting officials including the agency official assigned to conduct the procurement.

(b) *Project title and description.* (1) Name or designation of agency ADP resource system.

(2) Description of the requirement that is to be procured. Indicate whether this is a new requirement or an addition to or a modification of a current ADP service system.

(3) Estimated system life (see § 1-4.1102-11).

(4) Estimated system life cost (see § 1-4.1102-10).

(5) Location(s) (city and state) which require user access to the system.

(6) Fiscal year and quarter during which the solicitation or requirements package is expected to be released to the private sector for procurement action.

(7) Expected contract performance commencement date.

(c) *Procurement planning.* (1) Budgeted value of the procurement in the agency's request to OMB, indicating whether implicitly or explicitly described, including fiscal year(s) involved.

(2) Summary description of the alternatives considered to meet the requirement, the related costs and the bases for the alternatives selected with reference to the agency's requirements analysis and comparative cost analysis

(see FPMR §§ 101-35.207 and 101-35.209, respectively).

(3) If within TSP scope (see § 1-4.1209-2), indicate contracting arrangement contemplated (MAS, B/A, or exception) and type (full, interactive, or remote batch). If exception to TSP see paragraph (e), below.

(4) Conclusions of performance evaluation for the currently installed or used ADP resource system, when applicable (see FPMR Subpart 101-36.14).

(5) A statement that available ADP resources have been screened and none is available to satisfy the requirement (see FPMR Subparts 101-36.2 and 101-36.3).

(6) Documentation regarding telecommunications when applicable (see FPMR Subpart 101-36.11).

(7) Conclusions of software conversion study, when applicable (see § 1-4.1206-2).

(d) *Procurement strategy* (1) Description of conversion management planning actions (see FPMR § 101-35.206-1).

(2) Type of specification or purchase description (see FPMR § 101-35.205).

(3) The basis and documentation to support the use of compatibility limited requirements, when applicable (see § 1-4.1206-4).

(4) The basis and documentation to support a contemplated noncompetitive (sole source) procurement, when applicable (see § 1-4.1206-5). Specifically, the justification must address:

(i) The critical service or unique features or mandatory requirements, dictated by the intended use, that limits the procurement to a sole source (The overriding necessity of these competition limiting requirements shall be clearly identified.);

(ii) The steps taken which led to the conclusion that no other known or probable source of supply exists for the required services; and

(iii) The practical factors which preclude the development of specifications or the determination of the requirement in a form suitable for competition.

(5) The documentation to support a dedicated teleprocessing system strategy, when applicable (see § 1-4.1209(b)(2)).

(6) If within TSP scope (§ 1-4.1209-2), source selection information, as follows:

(i) List of ADP service requirements (mandatory and evaluated optional features, if any);

(ii) Other requirement elements to be evaluated;

(iii) Summary description of the benchmark and the method for developing cost information from the benchmark results or a description of how cost information will be determined if a benchmark is not used; and

(iv) The method to be used for combining all cost elements to determine the lowest overall system life cost evaluation of the services contract portion.

(7) If use of remote terminal emulation is to be a mandatory requirement, provide justification as set forth in § 1-4.1206-7.

(e) *Exceptions or deviations.* Provide a statement that the agency has reviewed and complied with all applicable regulations. List those sections of Subparts 1-4.11 and 1-4.12, current temporary regulations, Subchapter F of the FPMR, and the use of standards that apply to this procurement that cannot or will not be met by the agency. Identify and justify deviations to the listed regulations that the agency desires or requires. If the exception is within the TSP scope, provide documentation required by § 1-4.1209-3(d)(2).

(f) *Agency remarks.* Provide additional information concerning any of the above items or other special conditions associated with the procurement deemed necessary for understanding of the APR.

(g) *Agency references.* Provide references to relevant past GSA authorizations, meetings, telephone discussions, etc.

(h) *Agency signature.* The APR shall be signed by an official who has been assigned to initiate the acquisition action and shall specify the title of the official who has been assigned to be responsible for the conduct of the procurement (see § 1-4.1104(a)). GSA will process only those submissions signed by authorized officials. Other submissions will be returned without action to the submitting office for resubmission by an authorized agency official.

(i) *Supplemental submissions.* If prior to award the requirement or any of the procurement planning or strategy elements of an APR change materially from data submitted in the APR, irrespective of whether before or after authorization is received from GSA to proceed, the agency shall promptly provide a supplementary APR submission to GSA containing pertinent information.

§ 1-4.1204 Procurement-related directives.

Procurement actions shall conform with the following:

(a) Direction by the President and fiscal and policy controls exercised by OMB;

(b) The FPMR, particularly Subchapter F;

(c) Federal information processing standards (FIPS), Federal telecommunications standards (FED-STD), and joint standards (FIPS/FED-STD); and

(d) Except as otherwise provided by this Subpart 1-4.12, applicable procurement regulations (i.e., other provisions in the Federal Procurement Regulations (41 CFR Chapter 1), agency regulations implementing and supplementing the FPR, or, if applicable, the Defense Acquisition Regulation (DAR)).

§ 1-4.1205 Small purchases.

The provisions of Subpart 1-3.6, (or, if applicable DAR Part 3-6) Small Purchases, apply when the aggregate amount over the system life of any requirement for commercial ADP services does not exceed \$10,000. In addition, for services that are available on multiple award schedules (MAS) under the TSP, agencies may use the simplified MAS procedure (see § 1-4.1209-3(c)).

§ 1-4.1206 Competition in procurement actions.

(a) Full and open competition is a basic procurement objective of the Government. Maximum practicable competition among offerors who are capable of meeting the user's needs will ensure that the Government's ADP needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. To meet fully the lowest overall cost objective, it is essential that proper management and planning actions be accomplished before the acquisition becomes imminent (see FPMR Subpart 101-35.2).

(b) Agency ADP managers and contracting officers share the responsibility for ensuring that the basic procurement objective is met. The responsibility extends to fostering competitive conditions for subsequent procurements.

§ 1-4.1206-1 Competition for follow-on ADP services requirements.

Agencies must keep their commercial ADP services contract expiration dates in mind when planning for future ADP requirements activities (see FPMR § 101-35.204). Agency plans for follow-on procurement should allow sufficient time for the acquisition process, including conversion of data files and programs, if required. A competition for the follow-on period shall be started and

should be completed before the expiration of the existing contract.

§ 1-4.1206-2 Software conversion studies.

(a) Software conversion (see § 1-4.1102-2(f) for definition) studies shall be performed for all procurements to ensure that the user's needs are met at the lowest overall cost, price and other factors considered, including costs and other factors associated with conversion activities. However, a software conversion study is not required for an initial acquisition where no software exists. The provisions of § 1-4.1109-14 apply.

(b) Studies for procurements below the thresholds stated in paragraph (c) of this section shall be based on Government estimates determined in accordance with agency procedures. The procurement file shall be documented to record the estimates and the method of computation. The extent of the study will be based on the circumstances of the particular situation as determined by the agency.

(c)(1) A comprehensive software conversion study shall be made for each ADP services acquisition when either one of the two following conditions exists:

(i) The estimated system life cost (see §§ 1-4.1102-10 and 1-4.1102-11 for definitions) is expected to exceed \$2.5 million; or

(ii) The cost of conversion is to be used as the primary justification for a compatibility limited requirement when the estimated value of the procurement exceeds \$300,000.

(2) A comprehensive software conversion study means an analysis of a conversion requirement that as a minimum includes the following: (i) Problem definition; (ii) inventory of system components for the current system; (iii) description of the operating system environment; (iv) inventory of application programs and data files to be converted; (v) alternative procurement approaches (including compatible and noncompatible, as appropriate) with schedules for both the procurement and conversion effort; (vi) general description of the target environment (including hardware and system software, performance requirements, and constraints or limitations, dictated by the user needs, on the functional definition of the requirement); (vii) recommended approach to accomplish the conversion tasks (including analyses of alternative approaches with an economic and benefit analysis for each approach); and (viii) specific agency actions to be taken

to reduce the cost and risk of future conversions.

(3) An agency may elect to conduct its own comprehensive software conversion study, use contractual resources to accomplish the study, or request the GSA Federal Conversion Support Center (FCSC) to perform the study.

(d) All software conversion studies shall be maintained in agency files and be available for GSA review at the time the agency submits an agency procurement request (APR) to GSA.

§ 1-4.1206-3 Dedicated ADPE or software alternatives.

When a solicitation requires or allows an offeror to propose the dedicated use of ADPE or software in the performance of ADP services, the offeror shall be required to (a) price the use of the dedicated equipment or software on a separate line item basis and (b) specify the interface requirements between the offeror's system and the dedicated items. The Government shall reserve the right to furnish the dedicated items to the successful offeror for use in the performance of the contract. The location of the dedicated items is immaterial, except that all ADPE or software located at Government-owned or -controlled sites and operated by the Government or Government contract employees shall be considered dedicated-use ADPE or software, requiring the separate pricing and interface definition.

§ 1-4.1206-4 Compatibility limited requirements.

(a) Compatibility limited requirements tend to restrict competition and, therefore, shall not be made mandatory requirements solely for reasons of economy or efficiency. When conversion costs are to be evaluated, the solicitation shall provide for the submission and evaluation of acceptable noncompatible offers from responsible offerors that will meet the user's requirement at the lowest overall cost, price and other factors considered.

(b) A statement of requirements for ADP services to augment or replace existing ADP services (see FPMR § 101-35.209) that is limited to ADP services compatible with the existing operating system and ADPE shall be:

(1) Supported by a software conversion study (see § 1-4.1206-2);

(2) Justified on the basis of agency mission-essential data processing requirements, and economy and efficiency; and

(3) Meet the requirements of this § 1-4.1206-4.

(c) The following factors shall be considered in determining whether the incorporation of compatibility limited requirements is justified for the augmentation or replacement acquisition.

(1) The essentiality of existing software, without redesign, to meet agency critical mission needs. For example, the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility specifications are not used and the extent to which the Government would be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility specifications are not used.

(4) The steps being taken to foster competitive conditions on the augmentation or replacement acquisition (see § 1-3.101(d) (or, if applicable, DAR 3-101(d)) and FPMR § 101-35.206).

(5) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADP resource system.

(6) The extent of essential parallel operations, i.e., the need to continue operation of the old system in parallel with the new system until the new system can fully support the mission needs.

(7) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a competitive solicitation which couples the conversion effort and ADP services in a single contract, including consideration of the basis for and calculation of liquidated damages provisions for conversion performance failure.

(d) The findings that support the use of compatibility limited specifications shall be submitted with each Agency Procurement Request (APR) (see § 1-4.1203-1) for augmentation or replacement acquisition when the use of these specifications is contemplated.

§ 1-4.1206-5 Noncompetitive (sole source) requirements.

(a) When only one contractor can meet the selecting agency's requirements, the agency shall document its files with the basis and justification for the source selection and retain the documentation to manage and

plan for the subsequent procurement. Agency ADP managers and contracting officers share responsibility for management and planning actions necessary to foster competitive conditions for subsequent procurements. An acquisition plan showing the major milestones for completing a follow-on competitive selection shall be prepared. When the estimated cost of particular requirements exceeds the sole source procurement threshold set forth in paragraph (d) of § 1-4.1203, the additional documentation required by § 1-4.1203-1(d)(4) shall be submitted with the APR.

(b) The system life duration for an anticipated sole source procurement should be held to the minimum practicable life.

§ 1-4.1206-6 Exercising renewal options.

Before exercising any renewal options, including those on a TSP BA contract or MAS system life selection, the agency shall conduct an analysis to determine whether exercising the renewal option is the most advantageous method of fulfilling the Government need, price and other factors considered. Agency procurement files shall be documented with the results of the evaluation.

§ 1-4.1206-7 Use of remote terminal emulation for ADP services procurement.

(a) Agencies shall not require the mandatory use of remote terminal emulation³ in ADP services procurements except for:

(1) Dedicated teleprocessing requirements, and

(2) Unusually large and complex shared teleprocessing requirements.

(b) Agencies desiring to make the use of remote terminal emulation mandatory in the procurement of ADP services shall identify and justify to GSA the need for the use of the contemplated remote terminal emulation. This information will be provided along with the submission of the APR, when applicable. An agency should study the GSA Handbook, Use and Specifications of Remote Terminal Emulation in ADP System Acquisitions,⁴ before making its determination.

³ See § 1-4.1102-6 for definitions of terms.

⁴ The GSA Handbook, Use and Specifications of Remote, Terminal Emulation in ADP System Acquisitions, has been prepared to provide guidance to Federal agencies in designing and conducting remote terminal emulation benchmark tests. The Handbook summarizes introductory concepts and terminology of benchmarking and remote terminal emulation, describes when and how agencies should use remote terminal emulation, and specifies the remote terminal emulation capabilities that an agency may require offerors to

(c) Any agency desiring to deviate from the policy expressed in paragraph (a) of this section shall request authority from GSA under § 1-4.1200-4, before the issuance of the solicitation document.

§ 1-4.1206-8 Small business and labor surplus area concerns.

Commercial ADP services may be set aside for award to small businesses, the Small Business Administration (in accordance with Section 8(a) of the Small Business Act), or labor surplus area concerns. The provisions of Subparts 1-1.7 and 1-1.8 and the implementing agency policy and procedures (or, if applicable, DAR Parts 1-7 and 1-8) apply.

§ 1-4.1206-9 Computer security requirements.

When applicable, the provisions of § 1-4.1109-20 shall be applied to commercial ADP services and ADP support services, procurements (see also FPMR Subpart 101-35.3).

§ 1-4.1206-10 Implementation of standards.

When applicable, the provisions of § 1-4.1109-25 shall be applied to commercial ADP services and ADP support services procurements (see also FMR Subpart 101-36.13).

§ 1-4.1207 [Reserved]

§ 1-4.1208 Procurement requirements relating to the Privacy Act.

Executive agencies (see § 1-1.327-2(a) for definition) shall comply with § 1-1.327 (or, if applicable, DAR 1-327 and APP.P) when they procure commercial ADP services and support services subject to the Privacy Act⁵ and shall include in their solicitations and resultant contracts:

(a) Agency rules of conduct that a contractor and his employees shall be required to follow;

(b) A list of the anticipated threats and hazards inherent in the contemplated procurement against which the contractor must safeguard;

(c) A description of the safeguards that the agency requires the contractor to provide;

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the

discovery and countering of new threats and hazards; and

(e) Standard contract clauses entitled "Rights in Privacy Safeguards" (see § 1-4.1208-1) and "Access to Contractor Facilities and Records—Privacy Safeguards Inspection" (see § 1-4.1208-2).

§ 1-4.1208-1 Rights in privacy safeguards.

Contracts for commercial ADP services subject to the Privacy Act shall contain the following clause:

Rights in Privacy Safeguards

(a) The details of any and all safeguards that the contractor may design or develop under this contract shall become and remain the property of the Government and shall not be published or disclosed in any manner without the express written consent of the Government.

(b) The details of any and all safeguards that may be revealed to the contractor by the Government in the course of performing under this contract shall not be published or disclosed in any manner without the express written consent of the Government.

(End of Clause)

§ 1-4.1208-2 Access to contractor facilities and records—privacy safeguards inspection.

Contracts for commercial ADP services subject to the Privacy Act shall contain the following clause:

Access to Contractor Facilities and Records—Privacy Safeguards Inspection

(a) The Government shall, following presentation of advance written notice of _____ days be afforded full, free, and uninhibited access to all facilities and installations, and to all technical capabilities and operations, and to all documentation, records, and data bases for the purpose of carrying out a program of inspection to ensure continued efficacy and efficiency of safeguards against threats and hazards to data security, integrity, and confidentiality.

(b) In the event that new or unanticipated threats or hazards are discovered by either the Government or the contractor, or that existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. Mutual agreement shall then be reached on changes or corrections to existing safeguards or institution of new safeguards, with final determination of appropriateness being made by the Government. The cost of such changes or corrections shall be a matter of negotiation. The Government's liability is limited to an equitable adjustment of cost for such changes or corrections, and the Government shall not be liable for claims of loss of business, damage to reputation, or damages of any other kind arising from discovery of new or unanticipated threats or hazards, or any public or private disclosure thereof.

(End of Clause)

§ 1-4.1209 The Teleprocessing Services Program (TSP).

The TSP is a centrally managed GSA program that provides agencies with effective and efficient means of acquiring certain commercial ADP services including related ADP support services. Agencies shall use the TSP in accordance with this Subpart 1-4.12. The TSP includes two methods for acquiring commercial ADP services. Neither of these methods allows cost-reimbursement contracting. Agencies may use either method, as appropriate.

(a) *The multiple award schedule (MAS).* GSA periodically establishes a multiple award schedule under which GSA negotiated offerings, including firm rates for services, of the participating firms are made available for efficient agency acquisition. The MAS provides for incremental discounts based on each firm's total MAS dollar volume of services delivered Government-wide. The MAS defines the terms and conditions under which a purchase order placed by the agency will be performed by the agency selected participating contractor. The MAS terms and conditions can be modified only by GSA. Under the provisions of the schedule, a participating firm may modify its service offerings through a MAS amendment procedure. The MAS may be used for justified sole source requirements. Agencies shall initiate the procedure described in the handbook by notifying TSP MAS firms of their requirements and planned source selection and by publicizing the planned procurement, notwithstanding the exemption in § 1-1.1003-2(a)(5) (or, if applicable, DAR 1-1003.1(c)(v)). For procurements under the established thresholds (see 1-4.1203(d)), an agency has the option of not allocating time for receipt, processing, and distribution of amendments and price reductions; provided it has determined that at least two firms can satisfy the requirement and provided the CBD notice and letter of inquiry so states. The agency shall make the source selection in accordance with the terms of the MAS and shall evaluate, select a source, and issue a line item, time and resources-used, ceiling-price purchase order. The MAS shall not be used for a dedicated teleprocessing system⁶ (see § 1-4.1202-7

provide for testing ADP systems during acquisition. Copies of the GSA Handbook are available upon written request to General Services Administration (CDPX), Washington, DC 20405.

⁵ADP management provisions regarding the Privacy Act are in FPMR Subpart 101-35.17. Related provisions regarding security of Federal ADP and telecommunications systems are in FPMR Subpart 101-35.3.

⁶Dedicated system alternatives should not be confused with dedicated-use ADPE or software as provided in § 1-4.1206-3 where the Government reserves the right to furnish certain ADP items for use in the performance of teleprocessing services.

for definition) requirement; however, portions of a system such as on-line storage and communications ports may be reserved for exclusive use by a single user or groups of users.

(b) *The basic agreement (BA).* (1) GSA periodically establishes a BA under which GSA negotiated terms and conditions are made available for agency use in soliciting proposals and awarding contracts for TSP services. The BA terms and conditions can be modified only by GSA. Properly justified sole source procurements may be conducted under the BA when a requirement within the TSP scope cannot be satisfied under the MAS. Unless a sole source is justified, agencies shall notify firms that have entered into the BA of their requirements and planned source selection. Additionally, agencies are responsible for synopsisizing BA requirements in the "Commerce Business Daily" in accordance with applicable procurement regulations (see Subpart 1-1.10 (or, if applicable DAR Part 1-10)). Firms that have not entered into a BA with GSA shall be considered for contract award provided the firm agrees in its offer to all terms and conditions of the BA.

(2) Dedicated teleprocessing systems requirements may be included in a BA solicitation under the TSP provided:

(i) The agency procurement request includes appropriate documentation to support a system requirement configuration, or a specific part thereof, which is to be solicited on only a dedicated system basis. This provision does not apply when an agency expresses willingness to evaluate a dedicated system alternative proposal to a proposal priced on a resources used (unit rates) basis.

(ii) The solicitation document provides for the submission and evaluation of dedicated system proposals, on either a required or alternate basis. Offers for a dedicated system shall be considered only on a fixed-price, regardless-of-usage basis for the specified requirement.

(iii) When dedicated system proposals are to be solicited and evaluated as an alternative to resources used type proposals, evaluation criteria shall be sufficient to adequately compare a dedicated system pricing offer with resources used (unit rates) offers to determine lowest overall cost. The solicitation document shall provide that an offeror submitting a dedicated system proposal must also submit a resources used proposal, otherwise the dedicated system alternative shall be eliminated from consideration. Contract awards made on a system life basis

shall provide for an annual Government review of workload and usage and reserve the right to select on a prospective basis the more favorable of the contractor's dedicated system or resources used pricing mode.

(c) *Other contracting arrangements.* If an agency determines that a particular requirement within the scope of the TSP (see § 1-4.1209-1) cannot be satisfied by any firm currently participating in the TSP, either MAS or BA, or by any firm willing to enter into a contract under the TSP BA, the agency may acquire such services as an exception to the TSP, subject to the provisions set forth in paragraph (d) of § 1-4.1209-3.

(d) *TSP guidance.* (1) Guidance concerning the TSP may be obtained from the General Services Administration (CDR), Washington, DC 20405 or from any GSA/ADTS regional office.

(2) The Teleprocessing Services Program (TSP) Handbook provides procedures to be followed by Federal agencies in acquiring commercial ADP services within the TSP scope. The handbook is not a regulation. However, it reflects regulatory requirements of the FPR and FPMR. A limited number of copies of the handbook are available without charge to all Federal agencies by written request to any of the offices identified in paragraph (d)(1), above. Major revisions or new editions of the handbook are announced in FPR bulletins.

§ 1-4.1209-1 Applicability of the TSP.

(a) When a Federal agency requirement analysis (see FPMR § 101-35.203-4) indicates that commercial ADP services should be considered (see FPMR § 101-35.209) to satisfy an ADP requirement and it is within the scope (see § 1-4.1209-2) of the GSA managed TSP, and agency shall use the TSP (but see §§ 1-4.1205 and 1-4.1209-3(d)).

(b) Government contractors who require ADP teleprocessing services in the performance of work under cost-reimbursement type contracts or subcontracts may use the TSP pursuant to Subpart 1-5.9 (or, if applicable, DAR Part 5-9).

§ 1-4.1209-2 Scope of the TSP.

(a) *Covered TSP services.* Types of ADP services covered include interactive, remote batch processing, and a combination of these (full services), as well as related ADP support services incidental to the teleprocessing performed by commercial firms.

(b) *Excluded TSP services.* Predominantly or exclusively local

batch processing services are excluded. (See also § 1-4.1201(b).)

(c) *Covered TSP support services.* Types of related ADP support services covered include:

(1) Training services that are limited to the unique features of a particular teleprocessing service;

(2) Technical assistance/analyst services (TA/AS) specifically related to the TSP firm's providing teleprocessing services under the TSP as limited in paragraph (d) of this section. Such services are limited to assisting users on network operations, special features that may influence application system design, communication interfaces with contractor networks, or other ADP application oriented areas incidental to the use of the TSP firm's econometric, engineering, or other software packages;

(3) Use of the TSP firm's premium (extra charge) software packages related to a teleprocessing requirement as limited in paragraph (d);

(4) Use of the TSP firm's data bases related to a teleprocessing requirement;

(5) Furnishing network documentation;

(6) Conversion of Government-controlled files and application programs when initiating performance or changing firms under a TSP contracting arrangement as provided in paragraph (e); or

(7) Software redesign or programming as limited in paragraph (f).

(d) *Limitations on TA/AS and premium software packages.* Technical assistance/analyst services (TA/AS) and use of premium software packages (paragraph (c) (2) and (3) above of this section) have TSP acquisition dollar limitations that are reflected in both the MAS and BA. Procurement of these types of services that exceed the established limitations should be on a maximum practicable competition basis (see also § 1-4.1210). The dollar limitations for each teleprocessing requirement are 10% of the total value of the requirement per fiscal year, not to exceed \$100,000 per year for TA/AS and \$25,000 per year per premium software package. The requiring agency shall obtain authorization from the GSA TSP contracting officer before placing a purchase order under the MAS or awarding a contract under the BA that includes requirements that are estimated to exceed the above limitations.

(e) *Conversion under TSP.* ADP support services associated with conversion of files and application programs ((c)(6), above) may be included in a MAS purchase order or BA

contract at the option of the using agency, provided:

(1) A determination is made, when a TSP conversion requirement is estimated to exceed \$75,000, that more extensive competition is not practicable.

(2) The conversion is consistent with the management and planning action provisions set forth in FPMR § 101-35.206-1.

(3) Each participating firm, when the MAS method is selected and the teleprocessing requirement includes conversion services, is required to propose the conversion portion of the requirement or be eliminated from consideration for that teleprocessing requirement.

(4) The description of an individual TSP conversion requirement identifies, as a minimum, the number of programs to be converted, the source computer system, the number of lines of code to be converted by language, the number of files to be converted by organizational type (e.g., index sequential, sequential, random, DBMS), a description of the complexity and level of documentation of the files and programs, redocumentation requirements, training requirements, and specific testing and acceptance criteria for the converted programs and files.

(5) Offerors are provided an opportunity to inspect, for proposal purposes, the available documentation of all programs and files pertinent to the conversion effort, subject to necessary limitations for the protection of personal, proprietary, or other sensitive data.

(6) Offers for conversion services⁷ are solicited and awarded on a separate line item, firm fixed-price basis.

(7) Order placements or contract awards, when teleprocessing requirements include conversion services, are based on lowest overall cost, price and other factors considered. Cost of conversion shall be included as an element of overall teleprocessing services costs.

(f) *Limitations on software redesign or programming.* Software redesign or programming are excluded, except programming of linkage or bridge routines between multiple software packages under \$5000 per year per requirement, provided the MAS or BA so provides. Other limited application programming can be included only in a TSP BA contract provided the agency requests and receives specific

authorization by the GSA BA contracting officer (see also § 1-4.1210).

(g) *Excluded facilities management.* Facilities management of Government furnished ADP equipment is excluded.

(h) *Excluded ADPE.* The lease or purchase of ADPE including terminals is excluded.

§ 1-4.1209-3 Procedures for acquiring TSP services.

(a) *Description and authorization.* Agency ADP managers shall document their teleprocessing service requirements so TSP procedures can be economically and efficiently applied by the procurement activity. When the value of the procurement exceeds the blanket dollar thresholds for GSA authorization to proceed with a commercial ADP services procurement (see § 1-4.1203(d)(2)), the agency is required to submit an APR to GSA (see § 1-4.1203-1).

(b) *Evaluation and source selection.* Selection of a specific source shall be based on a technical and a system life cost evaluation appropriate to the procurement method selected (see also § 1-4.1206-6).

(1) Technical requirement evaluation factors shall be limited to mandatory service requirements and those evaluated optional service features that are assigned relative values (expressed in dollars, points, or any other reasonable indicators). Evaluated optional service features should not exceed 20% weighting value in the total evaluation. Other technical evaluation factors may be appropriate (see § 1-4.1109-15).

(2) The lowest overall cost, as defined in § 1-4.1102-10, shall be used in evaluation and source selection. Conversion costs shall be included in system life evaluations as provided in § 1-4.1109-14. Technically acceptable contractor price quotations instead of Government estimates for specific contractor conversion efforts shall be used in the Government's overall estimate of conversion cost in computing the system life costs.

(3) For requirements over \$300,000 annually, ADP service costs shall be based on benchmark results from all technically qualified firms. The agency's benchmark package shall be available to offerors at least 45 calendar days before benchmark performance. The use of benchmarks should be considered in selections under the threshold because different amounts of connect, I/O, and CPU time, for example, will be required by different contractor systems to accomplish the same workload. The selection of the benchmark workload is critical to the source selection because it

will exercise the contractor's billing algorithm, a significant factor in cost determination. If a benchmark is not used, the ADP service costs shall be derived by a cost factor calculation of the various categories of the workload estimate or other adequate techniques. FEDSIM has developed a synthetic benchmark for remote batch applications called the "Resource Driver Program" which can be considered (see § 1-4.1212).

(4) For selections under the MAS, prices, rates and discounts applied in the calculation of system life cost shall conform to the terms of the schedule agreement and shall be based on the most recent rates and discounts known as being achieved at a cut-off date common to all firms being evaluated. Rates and discounts can be obtained by contacting any GSA/ADTS regional office. Related ADP support service costs for selections under the MAS shall be derived directly from the pricelists.

(5) Benchmark materials to be used for selection under the MAS shall be available on the "Release date" of the requirements under MAS procedures. For selections under the BA, benchmark materials shall be available at the time solicitations are released. Benchmark materials shall be furnished to all firms who indicate an intent to enter into the competition. Under either the MAS or B/A, a copy of the benchmark used for cost evaluation purposes in the selection process shall be retained for periodic performance evaluation purposes over the system life of the requirement.

(6) The technically acceptable offer evaluated as the lowest overall cost, price and other factors considered, shall be selected.

(7) Agencies are responsible for ensuring that contractor services received and invoices submitted are consistent with the terms, conditions, and prices of the schedule or contract. The benchmark used for source selection, which exercises the contractor's billing algorithm, should be periodically rerun throughout the contract life to provide this verification. Agencies should contact GSA's Contract Programs Division (CDR), Washington, DC 20405, for assistance in invoice verification, auditing, and use of billing algorithms.

(c) *Low cost procurement.* When the system life estimated cost does not exceed \$10,000, the MAS method provides a simplified procedure that agencies may use for selecting teleprocessing services. Requirements shall not be fragmented in order to circumvent normal TSP procedures.

⁷ Under the MAS method, participating firms do not quote conversion services rates in their schedule pricelist; rather a firm offer is made for each particular requirement.

(d) **Exceptions.** (1) Agencies shall attempt to satisfy their commercial ADP service requirements which are within the scope of the TSP through use of the MAS or B/A methods. When it appears likely that neither method can satisfy the requirement, the agency shall conduct and document a market survey to determine the availability of the required services from participating TSP firms and from other sources that would negotiate under the TSP B/A. When the results of the survey are negative, an exception exists.

(2) When a TSP exception exists and when the value of the procurement exceeds the applicable threshold (see § 1-4.1203(d)(2)), the agency APR submission shall include the following:

- (i) Documentation of the survey;
- (ii) Documentation describing the method of procurement contemplated because of the survey results; and
- (iii) If sole source, documentation as set forth in § 1-4.1203-1(d)(4).

§ 1-4.1209-4 GSA review of selections under the TSP.

GSA reserves the right to review any agency TSP selection action under the MAS or BA or as an exception to the TSP, either before or after award. Consequently, contractor selection and procurement documentation shall be retained in agency files for a period of two years after selection.

§ 1-4.1210 Agency use of GSA regional contracts.

GSA establishes and makes available for the use of other agencies a variety of regional ADP support services contracts. These contracts may include such areas as software development and programming, production of computer-output microfilm, and data entry. Agencies should consult with their GSA/ADTS regional office to determine the scope and availability of these contracts. These sources of supply should be used if the agency determines they will meet the user's need at the lowest overall cost, price and other factors considered. The following information is generally descriptive of these contracts.

(a) These regional requirements contracts are mandatory on the GSA and on the contractor. They are optional

for use by agencies whose requirements fall within the scope of these contracts.

(b) Agencies who wish to use these contracts develop jointly with GSA regional personnel a statement of their work and deliverables. The GSA regional personnel serve as contract administrators on the contracts.

(c) Task orders are negotiated by GSA and the agency with vendors based upon services and deliverables specified by the requesting agency. GSA contract administrators ensure that contract provisions are met and services are delivered as negotiated.

(d) Agencies reimburse GSA through the ADP fund for services received under the requirements contracts.

§ 1-4.1211 Federal Conversion Support Center (FCSC).

FCSC is the primary resource for software conversion technology within the Federal Government. It is operated by GSA to provide Federal agencies with specialized technical and contracting expertise, techniques, and tools to plan conversion studies and accomplish software conversions. It provides these services to Federal activities on a reimbursable basis. Agencies should contact the FCSC for further information (703-756-6156).

§ 1-4.1212 Federal Computer Performance Evaluation and Simulation Center (FEDSIM).

FEDSIM provides technical assistance, support, and services on a reimbursable basis throughout the Federal government for simulation, analysis, and performance evaluation of automatic data processing systems. It is the primary source of supply for these services. See FPMR Subpart 101-36.14—Computer Performance Evaluation and ADP Simulation. Agencies should contact the FEDSIM for further information (703-274-8065).

§ 1-4.1213 Federal Compiler Testing Center (FCTC).

FCTC, operated by the General Services Administration, validates compilers which are acquired by or are utilized in the performance of ADP services in the Federal Government. The validation tests determine whether the compiler being tested implements the elements of the Federal processing

standard language to which the compiler relates. See § 101-36.1305 of the FPMR for standard terminology to be used in solicitation documents. Agencies should contact the FCTC for further information (703-756-6153).

PART 1-7—CONTRACT CLAUSES

The table of contents for Part 1-7 is amended by revising the entry for § 1-7.103-30 as follows:

Sec.
1-7.103-30 Clauses for solicitations and contracts for automatic data processing (ADP) resources.

Subpart 1-7.1—Fixed-Price Supply Contracts

Section 1-7.103-30 is amended to revise the title and text to recognize clauses in Subpart 1-4.12 as follows:

§ 1-7.103-30 Clause for solicitations and contracts for automatic data processing (ADP) resources.

(a) The clauses in § 1-4.1110 shall be inserted in solicitations and contracts for ADP equipment, software, maintenance services, and supplies under the conditions specified in § 1-4.1110. The clauses are:

(1) Warranty Exclusion and Limitation of Damages.

(2) Contractor Representation.

(3) Fixed-Priced Options Provision (Option to Extend the Term of the Contract, Option for Increased Quantity).

(4) Discontinuance Repricing Provision (Discontinuance of Rental and Repricing).

(b) The clauses in § 1-4.1208 shall be inserted in solicitations and contracts for ADP services and ADP support services under the conditions specified in § 1-4.1208. The clauses are:

(1) Rights in Privacy Safeguards.

(2) Access to Contractor Facilities and Records—Privacy Safeguards Inspection.

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

Dated: December 28, 1981.

Ray Kline,
Acting Administrator of General Services.

[FR Doc. 82-12910 Filed 5-11-82; 6:45 am]

BILLING CODE 6820-61-M

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Wednesday, May 12, 1982

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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
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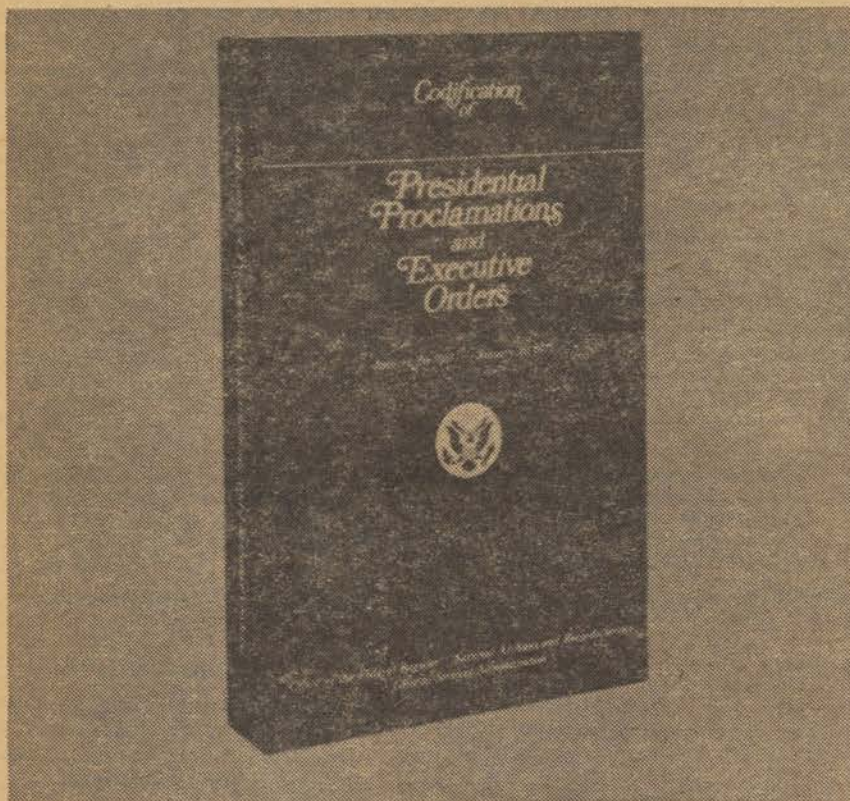
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