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Federal Register

Thursday
May 27, 1982

Selected Subjects

Air Pollution Control

Environmental Protection Agency

Anchorage Grounds

Coast Guard

Authority Delegations (Government Agencies)

Agriculture Department

Aviation Safety

Federal Aviation Administration

Coal Mining

Surface Mining Reclamation and Enforcement Office

Customs Duties and Inspection

Customs Service

Flood Insurance

Federal Emergency Management Agency

Freedom of Information

Federal Energy Regulatory Commission

Hazardous Materials

Environmental Protection Agency

Historic Preservation

National Park Service

Marine Safety

Coast Guard

Marketing Agreements

Agricultural Marketing Service

Medicaid

Health Care Financing Administration



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

Selected Subjects

Medicare

Health Care Financing Administration

Natural Gas

Federal Energy Regulatory Commission

Nuclear Materials

Nuclear Regulatory Commission

Organization and Functions (Government Agencies)

General Services Administration

Radio Broadcasting

Federal Communications Commission

Savings and Loan Associations

Federal Home Loan Bank Board

Water Pollution Control

Environmental Protection Agency

Editor's Note:

The list of subjects on the cover is designed to assist those users who review the **Federal Register** for broad subject areas. The list is compiled from subject terms supplied by agencies for certain of their rule and proposed rule documents as required by 1 CFR 18.20. Subject terms in the list may refer to more than one document. To locate the documents in the **Federal Register** covered by the subject terms in the list, users should consult the Table of Contents under the appropriate agency. We remind users that the list is a selective supplement to the Table of Contents and should not be construed as comprehensive.

This list is an experiment. We hope it will prove useful to those users inconvenienced by the discontinuation of the "Highlights" in February because of reduced personnel resources at the Office of the Federal Register. For this new list our editors simply select subject terms from those appearing in the edition's rule and proposed rule documents rather than perform the detailed analytical work which was needed to produce the "Highlights".

Comments on this list may be sent to Martha Girard, Director, Executive Agencies Division (NFE), Office of the Federal Register, NARS/GSA, Washington, D.C. 20408. Phone (202) 523-5240 (not a toll free number).

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Presidential Documents

Title 3—

Executive Order 12366 of May 25, 1982

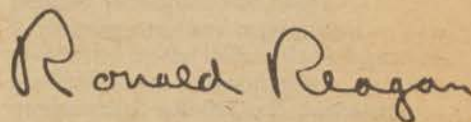
The President

Presidential Commission on Broadcasting to Cuba

By the authority vested in me as President of the United States of America, and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1), in order to permit an increase in the membership of the Presidential Commission on Broadcasting to Cuba by one member, Section 1(b) of Executive Order No. 12323 of September 22, 1981, is hereby amended to read as follows:

"(b) The Commission shall be composed of twelve members appointed by the President from among citizens of the United States."

THE WHITE HOUSE,
May 25, 1982.



[FR Doc. 82-14684

Filed 5-26-82; 9:03 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

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Thursday, May 27, 1982

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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 403

[Interpretation No. 1]

Allocation of Home Office Expenses to Segments

Editorial Note: Pursuant to a request from the General Accounting Office, the Office of the Federal Register will insert Interpretation No. 1 to Cost Accounting Standard 403 in the next edition of Title 4, Code of Federal Regulations presently scheduled for revision as of January 1, 1983. The text of Interpretation No. 1 published on March 3, 1980 (45 FR 13721) will be added as an appendix to Part 403 of Title 4, CFR.

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This document delegates to the Executive Assistant to the Secretary the authority to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980. It also designates the Executive Assistant to the Secretary as a general officer of the Department.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Office of the General Counsel, Department of Agriculture, Washington, D.C., (202) 447-6035.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 requires each agency head to designate

a senior official to carry out the responsibilities of the agency under the Act. The Secretary has designated the Executive Assistant to the Secretary as that official.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

1. The authority citation for Part 2 reads as follows:

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

2. Section 2.4 is revised to read as follows:

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary; the Under Secretary for International Affairs and Commodity Programs; the Under Secretary for Small Community and Rural Development; the Assistant Secretary for Natural Resources and Environment; the Assistant Secretary for Food and Consumer Services; the Assistant Secretary for Marketing and Inspection Services; the Assistant Secretary for Governmental and Public Affairs; the Assistant Secretary for Economics; the General Counsel; the Assistant Secretary for Administration; the Inspector General; the Judicial Officer; the Director of Science and Education; the Director, Office of Budget and

Program Analysis; and the Executive Assistant to the Secretary.

3. A new section 2.43 is added to read as follows:

§ 2.43 Executive Assistant to the Secretary.

The following delegations of authority are made by the Secretary of Agriculture to the Executive Assistant to the Secretary:

(a) Designated as the senior official to carry out the responsibilities of the Department under the Paperwork Reduction Act of 1980. This designation includes the following responsibilities:

(1) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department.

(2) Developing Department information policies and procedures and overseeing, auditing and otherwise periodically reviewing the Department's information resources management activities.

(3) Reviewing proposed Department reporting and recordkeeping requirements including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department.

(4) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs.

(5) Conducting and being accountable for acquisitions made by the Department pursuant to authority delegated under section 111 of the Federal Property and Administrative Services Act of 1949, as amended.

(6) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1980, including the review of Department information activities.

(b) In carrying out the responsibilities assigned in paragraph (a) of this section, the senior official is authorized to call upon any agency of the Department for assistance.

For Subparts A and D.

Dated: May 21, 1982.

John R. Block,

Secretary of Agriculture.

[FR Doc. 82-14392 Filed 5-26-82; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 692; Valencia Orange Reg. 691, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period May 28-June 3, 1982, and increases the quantity of such oranges that may be so shipped during the period May 21-27, 1982. Such action is needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATE: This regulation becomes effective May 28, 1982, and the amendment is effective for the period May 21-27, 1982.

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

SUPPLEMENTARY INFORMATION: Findings.

This rule has been reviewed under Secretary's Memorandum 1512-1, and Executive Order 12291 and has been designated a "non-major" rule. This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on February 5, 1982. The committee met again publicly on May 25, 1982, at Los Angeles, California, to consider the current and prospective

conditions of supply and demand and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for Valencia oranges is easier.

It is further 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 regulation and amendment are 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, and the amendment relieves restrictions on the handling of Valencia oranges. 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.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. Section 908.992 is added as follows:

§ 908.992 Valencia Orange Regulation 692.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period May 28, 1982, through June 3, 1982, are established as follows:

- (a) District 1: 364,000 cartons;
- (b) District 2: 336,000 cartons;
- (c) District 3: Unlimited cartons;

2. Section 908.991 Valencia Orange Regulation 691 (47 FR 21756), is hereby amended by revising paragraphs (a), (b) and (c) to read:

§ 908.991 Valencia Orange Regulation 691.

- (a) District 1: 508,000 cartons;
- (b) District 2: 392,000 cartons;
- (c) District 3: Unlimited cartons.

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

Dated: May 26, 1982.

D. S. Kuryloski,
Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc 82-14725 Filed 5-26-82; 11:39 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

CCC Grain Price Support Regulations Governing the Loan and Purchase Program for 1982 and Subsequent Crops Barley

Correction

In FR Doc. 82-13114 appearing on page 20744 in the issue of Friday, May 14, 1982; on page 20745, first column, in the heading for § 1421.52, "and" should read "of".

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

Regional Licensing Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations concerning the domestic licensing of source, byproduct, and special nuclear material to provide information concerning the further implementation of NRC's regional licensing program. The amendment specifies the categories of licensing actions for which full responsibility has been delegated to Regional Administrators. The amendment is necessary to inform current or prospective licensees of current NRC practice and organization.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, Office of Nuclear Material Safety and Safeguards, Telephone (301) 427-4002.

SUPPLEMENTARY INFORMATION: On September 7, 1981, the NRC amended its rules on licensing of certain nuclear materials so that licensees would communicate directly with Regions I and III (46 FR 44418). The Nuclear Regulatory Commission is again amending its regulation concerning the domestic licensing of source, byproduct and special nuclear material to reflect current NRC practices and assigned responsibilities under its regional licensing program. The revised provisions (§§ 30.6, 40.5, and 70.5) specify that inquiries concerning NRC regulations in 10 CFR Parts 30, 33, 35, 40 and 70 and applications for certain types of licenses or license renewals or revisions in Regions I and III be sent to the regional office. This requirement

would not apply to Agreement States Federal facilities or agencies of the District of Columbia.

The revised provisions do not change the requirements for direct communication between licensees and Regions I and III. With respect to the specific licensing actions delegated to the Regional Administrators, the revisions are intended to state more clearly exactly what licensing functions are now assigned to the Regional Administrators as their total responsibility under the Commission's regionalization program.

The basic delegation of authority for the Regional Administrators is contained in NRC Manual Chapter 0128. The general delegation requires supplementation, however, as specific functions are transferred to the Regional Offices. On May 13, 1982, the Executive Director for Operations and the Director of the Office of Nuclear Materials Safety and Safeguards executed a special delegation of authority to the Regional Administrators for Regions I and III. The functions fully and formally assigned to the regions are essentially those previously administered in the Regional offices under the regionalization pilot programs. The revised regulations reflect the pertinent provisions of the delegation of authority.

The changes to §§ 30.6, 40.5, and 70.5 are nonsubstantive amendments. The amendments are intended to inform current and prospective licensees of current NRC practices and organization. The revised §§ 30.6, 40.5, and 70.5 indicate the type of licenses now fully delegated to Regional Administrators in Regions I and III and covered under the regional licensing program and the proper addresses in Regions I and III for submitting covered licensing actions.

Since this is a minor procedural amendment the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 553) do not apply and good cause exists for making the amendment effective May 27, 1982.

List of Subjects in 10 CFR Parts 30, 40, 70

Nuclear power plants, Nuclear materials.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and U.S.C. 552 and 553, the following amendments to 10 CFR Parts 30, 40, and 70 are published as a document subject to codification.

The authority citation for this document is:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended 42 U.S.C. 2201.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING PROCEEDINGS

1. Section 30.6 is revised to read as follows:

§ 30.6 Communications.

(a) Unless otherwise specified or covered under the regional licensing program as provided in paragraph (b) of this section, any communication or report concerning the regulations in Parts 30-35 of this chapter, and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to—Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) By delivery in person to the Commission offices at—

(i) 1717 H Street, N.W., Washington, D.C.; or

(ii) 7915 Eastern Avenue, Willste Building, Silver Spring, Maryland.

(b) The Commission has delegated the Regional Administrators for Regions I and III all authority and responsibility for selected parts of its material licensing program as described below. Any communication, report, or application covered under the Commission's regional licensing program for Regions I and III must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes full authority to issue, renew, amend, cancel, modify, suspend and revoke licenses for source, byproduct, and special nuclear material issued pursuant to 10 CFR Parts 30, 33, 35, 40, and 70 to all persons (except Federal agencies and agencies of the District of Columbia) for academic, medical, and industrial uses, with the following exceptions:

- (i) Irradiators.
- (ii) Cardiac Pacemakers.
- (iii) Medical Teletherapy Units.
- (iv) Well logging.
- (v) Manufacturing or distribution of nuclear materials or products containing nuclear materials.
- (vi) Disposals of nuclear material pursuant to 10 CFR 20.302.
- (vii) Activities in the fuel cycle.
- (viii) Special nuclear material in quantities sufficient to constitute a critical mass in any room or area.
- (ix) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of such sources and devices.
- (x) Industrial radiography.

(2) The following regions are participating in the regional licensing program.

(i) Region I. With the exception of Federal facilities and the agencies of the District of Columbia, the regional licensing program involves the following Region I Non-Agreement States:

Connecticut, Delaware, Maine, Massachusetts, New Jersey, Pennsylvania, and Vermont. All inquiries, communications and each application for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section shall be sent to—U.S. Nuclear Regulatory Commission, Region I, Material Program Section No. 2, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

(ii) Region III. With the exception of Federal facilities, the regional licensing program involves the following states: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. All inquiries, communications and each application for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section shall be sent to U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

2. Section 40.5 is revised to read as follows:

§ 40.5 Communications.

(a) Unless otherwise specified or covered under the regional licensing program as provided in paragraph (b) of this section, any communication or report concerning the regulations in Parts 30-35 of this chapter, and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to—Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) By delivery in person to the Commission offices at—

(i) 1717 H Street, N.W., Washington, D.C.; or

(ii) 7915 Eastern Avenue, Willste Building, Silver Spring, Maryland.

(b) The Commission has delegated the Regional Administrators for Regions I and III all authority and responsibility for selected parts of its material licensing program as described below. Any communication, report, or application covered under the Commission's regional licensing

program for Regions I and III must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes full authority to issue, renew, amend, cancel, modify suspend and revoke licenses for source, byproduct, and special nuclear material issued pursuant to 10 CFR Parts 30, 33, 35, 40, and 70 to all persons (except Federal agencies and agencies of the District of Columbia) for academic, medical, and industrial uses, with the following exceptions:

- (i) Irradiators.
- (ii) Cardiac Pacemakers.
- (iii) Medical Teletherapy Units.
- (iv) Well logging.
- (v) Manufacturing or distribution of nuclear materials or products containing nuclear materials.
- (vi) Disposals of nuclear material pursuant to 10 CFR 20.302.
- (vii) Activities in the fuel cycle.
- (viii) Special nuclear material in quantities sufficient to constitute a critical mass in any room or area.
- (ix) Health and Safety design review of sealed sources and devices and approval, for licensing purposes, of such sources and devices.
- (x) Industrial radiography.

(2) The following regions are participating in the regional licensing program.

(i) Region I. With the exception of Federal facilities and the agencies of the District of Columbia, the regional licensing program involves the following Region I Non-Agreement States: Connecticut, Delaware, Maine, Massachusetts, New Jersey, Pennsylvania, and Vermont. All inquiries, communications and each application for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section shall be sent to—U.S. Nuclear Regulatory Commission, Region I, Material Program Section No. 2, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

(ii) Region III. With the exception of Federal facilities, the regional licensing program involves the following states: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. All inquiries, communications and each application for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section shall be sent to U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. Section 70.5 is revised to read as follows:

§ 70.5 Communications.

(a) Unless otherwise specified or covered under the regional licensing program as provided in paragraph (b) of this section, any communication or report concerning the regulations in Parts 30–35 of this chapter, and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to—Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) By delivery in person to the Commission offices at—
(i) 1717 H Street, NW., Washington, D.C.; or

(ii) 7915 Eastern Avenue, Willste Building, Silver Spring, Maryland.

(b) The Commission has delegated the Regional Administrators for Regions I and III all authority and responsibility for selected parts of its material licensing program as described below. Any communication, report, or application covered under the Commission's regional licensing program for Regions I and II must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes full authority to issue, renew, amend, cancel, modify, suspend and revoke licenses for source, byproduct, and special nuclear material issued pursuant to 10 CFR Parts 30, 33, 35, 40, and 70 to all persons (except Federal agencies and agencies of the District of Columbia) for academic, medical, and industrial uses, with the following exceptions:

- (i) Irradiators.
- (ii) Cardiac Pacemakers.
- (iii) Medical Teletherapy Units.
- (iv) Well logging.
- (v) Manufacturing or distribution of nuclear materials or products containing nuclear materials.
- (vi) Disposals of nuclear material pursuant to 10 CFR 20.302.
- (vii) Activities in the fuel cycle.
- (viii) Special nuclear material in quantities sufficient to constitute a critical mass in any room or area.
- (ix) Health and safety design review of sealed sources and devices and approval, for licensing purposes, of such sources and devices.
- (x) Industrial radiography.

(2) The following regions are participating in the regional licensing program.

(i) Region I. With the exception of Federal facilities and the agencies of the District of Columbia, the regional licensing program involves the following Region I Non-Agreement States: Connecticut, Delaware, Maine, Massachusetts, New Jersey, Pennsylvania, and Vermont. All inquiries, communications and each application for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section shall be sent to—U.S. Nuclear Regulatory Commission, Region I, Material Program Section No. 2, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

(ii) Region III. With the exception of Federal facilities, the regional licensing program involves the following states: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. All inquiries, communications and each application for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section shall be sent to U.S. Nuclear Regulatory Commission, Region III, Material Licensing Section, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

Dated at Bethesda, Maryland this 13th day of May 1982.

For the Nuclear Regulatory Commission,
William J. Dircks,
Executive Director for Operations.

[FR Doc. 82-14501 Filed 5-26-82; 8:45 am]
BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 531 and 563

[No. 82-367]

Transfer and Repurchase of Government Securities

Dated: May 20, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting certain amendments to its regulations concerning retail repurchase agreements to confirm and expand significant consumer protections. (1) including the requirements that retail repurchase agreement purchasers be given a perfected security interest in the security or securities underlying retail repurchase agreements, (2) that the securities underlying retail repurchase agreements be market-to-market, and (3) that prospective retail repurchase

agreement purchasers be provided with offering documents which contain full and accurate disclosure of all material information regarding the retail repurchase agreement and the issuing institution. Institutions that do not meet certain net-worth guidelines would be required to provide additional safeguards and financial disclosure to consumers. Also, the Board is deleting for qualified issuers the current regulatory prohibition against the automatic renewal of retail repurchase agreements.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT:

Donna K. Ralston (202-377-6427), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1982, by Resolution No. 82-105 (47 FR 8204, February 25, 1982), the Board proposed for public comment extensive revisions to its regulations concerning the issuance of retail repurchase agreements by institutions ("insured institutions") the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). The Board received 131 comment letters concerning the proposed amendments from insured institutions, law firms, and trade organizations. Except in regard to the proposed eligibility requirement that issuing institutions meet the Board's three-percent net-worth requirement, most of the comments were favorable. Therefore, with certain modifications, the Board has determined to adopt the amended regulations substantially as proposed. The comments and the Board's final regulations are discussed below.

Automatic Renewal, Disclosure, and Eligibility

Retail repurchase agreements are securities under the Securities Act of 1933 ("1933 Act") and the Securities Exchange Act of 1934 ("1934 Act"). Although retail repurchase agreements are exempt from registration under section 3(a)(5) of the 1933 Act, 15 U.S.C. 77c(a)(5), the offer and sale of retail repurchase agreements are subject to the anti-fraud provisions of the 1933 Act and the 1934 Act. See, Securities and Exchange Commission Release No. 33-6351 (September 25, 1981). The anti-fraud provisions of the federal securities laws provide for civil injunctive relief, civil damage liability, and criminal liability. See, Sections 12(2), 17(a), 20 and 24 of the 1933 Act, 15 U.S.C. 77(2),

77q(a), 77t, and 77x, and Sections 10(b), 21, and 32 of the 1934 Act, 15 U.S.C. 78j(b), 78u, and 78ff. The anti-fraud provisions of the federal securities laws generally require that there be disclosed to potential investors all facts that would be material to the decision to invest in a particular security. For instance, Rule 10b-5 of the Securities and Exchange Commission, 17 CFR 240.10b-5, adopted under section 10(b) of the 1934 Act, provides that:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase of any security.

Because of the prohibition against automatic renewal, retail repurchase agreements have a relatively short-term maturity structure. Since information material to a long-term investment may not be material in the context of a particular transaction to a short-term investment, the disclosure mandated by the federal securities laws generally is less burdensome in connection with the offer and sale of retail repurchase agreements than in connection with the offer and sale of long-term debt securities. In addition to reducing in most cases the disclosure burden on issuing institutions, the 89-day limitation on the term of retail repurchase agreements also establishes an ascertainable point at which an investor would be entitled to receive disclosure of the occurrence of an event circumstance, or change of circumstance material to the new and independent investment decision of renewal.

The Board is sensitive to the requirement that insured institutions observe the federal securities laws in connection with the offer and sale of retail repurchase agreements. When it determined to propose to delete the prohibition against the automatic renewal of retail repurchase agreements, it was concerned that there would result an impairment of the benefits of the short-term nature of retail repurchase agreements, i.e., relatively minimal initial disclosure, which significantly reduces expenses and administrative burdens, and a continuous disclosure system. This problem was addressed by the Board in its proposed regulations

concerning automatic renewal and disclosure. In its § 563.8-4(b)(7) automatic renewal proposal, the Board retained the current 89-day maturity structure for retail repurchase agreements by providing that automatic renewals may be effective for any term or terms not exceeding 89 days. The purpose of this provision was to focus the concept of automatic renewal on the expiration of an 89-day period rather than on renewals that may occur automatically within an 89-day period. There would be permitted, for instance, variable rate, daily, renewable, retail repurchase agreements with a maximum term of 89 days. At the end of the 89-day term, the agreement may be automatically renewed for a subsequent 89-day period. The final provision, which has been redesignated as § 563.8-4(b)(6), has been revised to make these automatic renewal rules clearer. Under § 563.8-4(b)(5), the issuing institution is required to provide purchasers with a revised offering document prior to renewal or automatic renewal if there has been any material change in any of the representations set forth in an offering document previously provided to the purchasers. Since under revised § 563.8-4(b)(6) the concept of automatic renewal is tied to an 89-day period, the final regulations retain a continuous disclosure system.

Requiring issuing institutions to satisfy their disclosure responsibilities does not ensure that those responsibilities will be met. The Board is concerned with compliance not only because of its supervisory responsibilities, but also because of the risk that non-compliance may result in the filing and prosecution of claims against an issuing institution that could directly or indirectly affect public confidence in the issuing institution. The disclosure issue is difficult to resolve since the Board is unable to establish specific disclosure criteria. The information that would be material to a particular retail repurchase agreement investor is wholly dependent upon the structure of the retail repurchase agreement program and the financial resources of the issuing institution. The Board believes, however, that there are alternative means to resolve its compliance questions, the most extreme of which is a prohibition against the issuance of retail repurchase agreements by institutions that do not meet certain financial benchmarks. That alternative was proposed by the Board.

Many commenters objected to the proposed net-worth eligibility test, and the Board has concluded that it may be too inflexible a standard to apply at this

time. There is no capitalization requirement for entities that issue equity or debt securities, and absent circumstances not present here, the Board does not believe that it should impose upon insured institutions excessive requirements that are not statutorily mandated and do not serve a legitimate regulatory or statutory purpose. Therefore, the Board is deleting the proposed net-worth eligibility requirement from the final regulations.

The Board does wish to ensure that issuing institutions which are in an impaired financial condition are aware of the greater disclosure burdens imposed upon them by the federal securities laws, and to ensure that those institutions comply with those disclosure requirements and the Board's consumer safeguard provisions. Therefore, the Board is establishing in § 563.8-4(b)(7) certain filing requirements for issuing institutions that do not have a net worth equal to one percent of all liabilities (*i.e.*, total assets minus net worth) plus an amount equal to 20 percent of scheduled items. Within 45 days after the determination by an issuing institution that it has a § 563.8-4(b)(7) net-worth deficiency, it is required to file with the Principal Supervisory Agent and the Division of Securities and Corporate Analysis of the Office of General Counsel (1) the opinion of independent counsel that the interest of retail repurchase agreement purchasers in the security or securities underlying the retail repurchase agreements is a perfected security interest under applicable state law, and (2) the offering document required under § 563.8-4(b)(5).

In addition to the filing requirements, the Board provides in § 563.8-4(b)(5) that issuing institutions that have a net-worth deficiency under § 563.8-4(b)(7) shall include certain financial statements in their retail repurchase agreement offering documents,⁴ and provides in § 563.8-4(b)(7) that those institutions shall collateralize their retail repurchase agreements with qualified securities having a market value at least equal to 105 percent of the principal amount of the issuing institution's retail repurchase obligation, plus accrued interest, as of a date certain in each succeeding week of the term of the retail repurchase agreement. Also, in § 563.8-4(b)(6), the Board provides that retail

repurchase agreements may not be automatically renewed by issuing institutions that have a § 563.8-4(b)(7) net-worth deficiency.

Notice of Renewal

In its proposed regulations the Board solicited comments concerning what notice, if any, should be given to retail repurchase agreement purchasers concerning the automatic renewal of a retail repurchase agreement. Most commenters expressed the view that no notice should be required. Other commenters suggested that the Board adopt the established notice procedure for the renewal of six-month certificate accounts.

The Board's concern regarding the necessity of a notice of renewal was the possibility that a retail repurchase agreement could be automatically renewed for an 89-day period at a rate of interest significantly different from the rate of interest paid during the original term of the retail repurchase agreement. After further consideration, however, the Board does not believe that that is a serious concern.

For competitive reasons, many retail repurchase agreement programs are structured with short maturities (*i.e.*, less than 30 days) to take advantage of fluctuating market rates. Also for competitive reasons, many issuing institutions permit retail repurchase agreement purchasers the opportunity to withdraw their investments on a periodic basis or on demand. Typically, for instance, in variable rate, daily, renewable, retail repurchase agreement programs, particularly those involving a "sweep" into the repurchase program of excess funds in an insured account, purchasers are given the right to withdraw their funds at any time. The proliferation of short-maturity retail repurchase agreement programs is a strong indicator of the increased sophistication among retail repurchase agreement investors, who balance an investment's rate of return against its relative liquidity. In such a highly competitive climate, there is no need to impose requirements designed to protect investors from their own lack of diligence.

Therefore, in § 563.8-4(b)(6) the Board provides that institutions which provide for the automatic renewal of retail repurchase agreements shall provide and notify each retail repurchase agreement purchaser of a means to determine the current rates of interest.

Legend

The Board received several adverse comments to its proposed revision of the legend required to be displayed on retail

repurchase agreement documents. The Board agrees that the addition of language to the effect that retail repurchase agreements are not guaranteed by the United States government is not required in view of § 563.8-4(b)(3), which prohibits issuing institutions from using the term "guaranteed" in retail repurchase agreement advertisements or offering documents. Therefore, the Board has determined in § 563.8-4(b)(1) to revert to the legend formerly required under § 531.12 of the Federal Home Loan Bank System Regulations.

Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 13, 1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective and legal basis underlying the proposed rule.* These elements have been incorporated elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule will apply.* The proposed rule will apply only to institutions the accounts of which are insured by the FSLIC.

3. *Impact of the proposed rules on small institutions.* The proposal would confirm and expand certain consumer protections. In addition, the proposal would remove the prohibition against automatic renewal. There would be no additional regulatory impact on small institutions.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap or conflict with the proposal.

5. *Alternatives to the proposed rule.* Most alternatives to the proposal would lessen flexibility afforded institutions. Moreover, because retail repurchase agreements are not accounts insured by the Federal Savings and Loan Insurance Corporation, alternatives to the proposal which would decrease regulatory requirements would reduce consumer protections.

Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80-584 (September 11, 1980) have been incorporated into the supplementary information regarding the regulations.

The Board has determined that the 30-day delay of effective date imposed by 5 U.S.C. 552(d) and 12 CFR 508.14 is unnecessary and not in the public interest. The final regulations adopted by the Board significantly ease current

⁴ The Board does not intend to imply by this requirement that the financial condition of an issuing institution would not be material to a prospective retail repurchase agreement investor if the issuing institution did not have a net-worth deficiency under § 563.8-4(b)(7). That issue must be resolved by the issuing institution and its legal counsel.

restrictions and provide increased flexibility to issuing insured institutions. Because of these factors, the Board finds that it is in the public interest for insured institutions that intend to issue retail repurchase agreements to be permitted to take immediate advantage of the final regulations.

List of Subjects in 12 CFR Parts 531 and 563

Federal home loan banks, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 531 and 563 of Subchapters B and D, respectively, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

PART 531—STATEMENTS OF POLICY

1. Transfer § 531.12 of Subchapter B to Subchapter D and redesignate it as § 563.8-4.

§ 531.12 Transfer and repurchase of government securities.

(Redesignated effective May 27, 1982.)

PART 563—OPERATIONS

2. Amend § 563.8(f)(2)(i)(c) to read as follows:

§ 563.8 Borrowing limitations.

(f) *Minimum denominations of securities evidencing outside borrowings.*

(2) *Exceptions.* (i) There is no minimum denomination for securities:

(c) Complying with § 563.8-4 of this Part.

3. Revise the newly redesignated § 563.8-4 to read as follows:

§ 563.8-4 Transfer and repurchase of government securities.

(a) An insured institution shall not issue repurchase agreement obligations in denominations under \$100,000 with a maturity of 90 days or more evidencing an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the institution is obligated to repurchase, unless such obligations are issued to financial institutions the accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or to a broker or dealer

registered with the Securities and Exchange Commission.

(b) Any repurchase agreement obligation under \$100,000 with a maturity of less than 90 days shall meet the following requirements.

(1) *Legend.* Each repurchase agreement and all advertisements and offering documents relating to repurchase agreements shall state, on their face, in plainly legible form, the following legend: "This obligation is not a savings account or a deposit and is not insured by the Federal Savings and Loan Insurance Corporation."

(2) *Prohibited representations.* An institution issuing repurchase agreements shall not use in its agreements, advertisements, or offering documents the terms "guaranteed," "no risk," "account," "deposit," "withdraw" or other terms which imply that the repurchase agreement is insured or guaranteed by the United States government, an agency of the United States government, or any third party; or the term "fund" or other terms which imply that the repurchase agreement is an interest in an investment company.

(3) *Security interest.* The interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement shall constitute a perfected security interest under applicable state law.

(4) *Value of collateral.* The market value of the security or securities underlying a repurchase agreement shall be at least equal to the principal amount of the issuing institution's repurchase agreement obligation as of a date certain in each succeeding month of the original or renewed term of the repurchase agreement.

(5) *Disclosure.* An institution issuing repurchase agreements shall provide each prospective repurchase agreement purchaser with an offering document which shall contain full and accurate disclosure of all material information regarding the repurchase agreement and the issuing institution. Any material change in any of the material representations set forth in the offering document shall be reflected in a revised offering document that shall be provided to purchasers before any renewal or automatic renewal of a repurchase agreement may be effected. An institution that has a net-worth deficiency under paragraph (b)(7) of this section shall include in its offering document the following financial statements:

(i) The institution's audited statements of condition and operations for its last fiscal year prepared in accordance with the requirements of § 563c.1 of this Subchapter;

(ii) On a comparative basis, the institution's latest unaudited statement of condition for the quarter ending within 135 days of any sale, renewal, or automatic renewal of a repurchase agreement, and an unaudited statement of operations for the period then ended, prepared in accordance with the requirements of § 563c.1; and

(iii) The institution's latest monthly financial report filed with the Corporation.

(6) *Renewal; notice of applicable interest rates.* The maximum term of a repurchase agreement shall be 89 days. Unless otherwise provided for by the terms of a repurchase agreement, automatic renewals effected within an 89-day period from the date of execution, renewal, or automatic renewal of a repurchase agreement shall not be deemed to constitute renewals or automatic renewals under paragraph (b) of this section. Repurchase agreements may be automatically renewed for any period not exceeding 89 days for each automatic renewal pursuant only to the written agreement between the purchaser and the issuing institution that the repurchase agreement may be automatically renewed at the option of the issuing institution in the absence of the oral or written instruction of the purchaser that the repurchase agreement shall not be renewed. Institutions which provide for the automatic renewal of repurchase agreements shall provide and notify each retail repurchase agreement purchaser of a means to determine the current rates of interest. Repurchase agreements may not be automatically renewed by an institution which has a net-worth deficiency under paragraph (b)(7) of this section.

(7) *Eligibility requirements.* An institution which issues or has outstanding repurchase agreements issued under paragraph (b) of this section shall calculate its net worth on a monthly basis in accordance with § 563.13(b) of this Part. An institution which does not have net worth equal to the sum of one percent of all liabilities (i.e., total assets minus net worth) of the institution, plus an amount equal to 20 percent of the institution's scheduled items, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements.

(i) Within 45 days after the determination of a net-worth deficiency under paragraph (b)(7) of this section, the institution shall file with the Principal Supervisory Agent and the Division of Securities and Corporate Analysis of the Office of General

Counsel, and shall continue to file thereafter on a current basis for as long as the net-worth deficiency shall exist, the following:

(a) Three copies of an opinion of independent legal counsel that the interest of repurchase agreement purchasers in the security or securities underlying the repurchase agreements constitutes a perfected security interest under applicable state law; and

(b) The offering document required under paragraph (b)(5) of this section.

(ii) Within 45 days after the determination of a net-worth deficiency under paragraph (b)(7) of this section, and thereafter on a date certain in each succeeding week of the original or renewed term of the repurchase agreement for as long as the net-worth deficiency shall exist, the market value of the institution's security or securities underlying a repurchase agreement shall be at least equal to 105 percent of the principal amount of the issuing institution's repurchase agreement obligation, plus accrued interest.

(iii) An institution which has a net-worth deficiency under paragraph (b)(7) of this section shall not renew an outstanding repurchase agreement unless it provides the purchaser with the disclosure document required under paragraph (b)(5) of this section and the purchaser thereafter affirmatively elects to renew the repurchase agreement.

(Sec. 5, 48 Stat. 134, as amended; 12 U.S.C. 1464, secs. 402, 403, 406, 48n Stat. 1256, 1257, 1259, as amended; 12 U.S.C. 1725, 1726, 1729. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.
Gregory B. Smith,
Acting Secretary.

[FR Doc. 82-14416 Filed 5-26-82; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-CE-19-AD; Amdt. 39-4386]

Airworthiness Directives; Piper Models PA-31T, PA-31T1 and PA-31T2 Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) modifying the emergency exit window installation on certain Piper Models PA-31T, PA-31T1 and PA-31T2 airplanes. This action is necessary to correct an excess sealant

condition of the window discovered during an inspection at one of the airplane manufacturer's factories. Improper functioning or sticking of the emergency exit window would delay or could make it impossible for the occupants to exit the airplane in an emergency situation.

EFFECTIVE DATE: June 3, 1982.

COMPLIANCE: Within 50 hours time-in-service after the effective date of this AD.

ADDRESSES: Piper Service Bulletin No. 733, dated January 25, 1982, applicable to this AD, may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745 or examined at the FAA, New York Aircraft Certification Office, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. A copy of the Service Bulletin is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. V. Pulera, Project Engineer, Systems and Equipment Section, New York Aircraft Certification Office, FAA, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone (212) 995-3372.

SUPPLEMENTARY INFORMATION: During inspection of the affected model airplanes at the Piper Aircraft Corporation's Lock Haven plant, it was found impossible to remove the emergency exit window in the normal manner. Subsequent investigation involving additional aircraft disclosed that excess fuselage sealant in the emergency exit window frame area was preventing release of the seal from the window frame.

To ensure that this condition does not occur and that the emergency exit window functions properly, the airplane manufacturer modified the emergency exit window installation by installing Teflon tape on the frame in the area of the exit window seal on production PA-31T, PA-31T1 and PA-31T2 airplanes. In addition, the manufacturer issued Piper Aircraft Corporation Service Bulletin No. 733 dated January 25, 1982, which provides instructions for incorporating this modification on in-service aircraft. Since the condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued, applicable to certain Piper Models PA-31T, PA-31T1 and PA-31T2 airplanes, making compliance with the modifications described by aforementioned Service Bulletin mandatory.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Piper: Applies to PA-31T Cheyenne/Cheyenne II (S/Ns 31T-8120036 through 31T-8120042, 31T-8120044 through 31T-8120050, 31T-8120055 and 31T-8120057), PA-31T1 Cheyenne I (S/Ns 31T-8104040 and 31T-8104041, 31T-8104043 through 31T-8104046, 31T-8104048, 31T-8104051, 31T-8104054, 31T-8104055, 31T-8104057 and 31T-8104058) and PA-31T2, Cheyenne II XL (S/Ns 31T-8166001, 31T-8166005 through 31T-8166017, 31T-8166019 through 31T-8166021, 31T-8166030 and 31T-8166031) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible sticking of the emergency exit window, accomplish the following:

(a) Modify the emergency exit window by installing Teflon tape on the emergency exit window frame in the seal area in accordance with Piper Aircraft Corporation Service Bulletin No. 733 dated January 25, 1982.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance may be used when approved by the Chief, New York Aircraft Certification Office, FAA, Federal Building, J.F.K. International Airport, Jamaica, New York 11430.

This amendment becomes effective on June 3, 1982.

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

Note.—The FAA has determined that this regulation involves an emergency regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and certifies that the rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it involves modification of only a few aircraft owned by small entities. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or

analysis, as appropriate, will be prepared and placed in the regulatory docket; otherwise an evaluation is not required. A copy of it, when filed, may be obtained by contacting the Rules Docket at the location identified under the caption "ADDRESSES."

Issued in Kansas City, Missouri, on May 13, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82-14251 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 21512; Amendment 39-4388]

Airworthiness Directives; Government Aircraft Factories (GAF) Nomad Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, Revision of existing Airworthiness Directive (AD).

SUMMARY: This amendment revises paragraph (a) of Airworthiness Directive (AD) 81-07-01, applicable to Government Aircraft Factories (GAF), Nomad Models N22B and N24A airplanes. This revision is necessary to (1) correct the modification instructions for the horizontal stabilizer by specifying use of MS20470AD rivets in place of the presently required MS20426AD rivets which are unsuitable for the .016 inch upper skin panel and (2) allow continued use of AGS 2048-420-BS 1/2 inch pop rivets installed on each access panel door.

DATES: Effective date: June 10, 1982.
Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT:

Gary K. Nakagawa, Chief, Aircraft Certification Field Office, ANM-170H, Federal Aviation Administration, P.O. Box 50246, Honolulu, Hawaii 96850; Telephone (808) 546-8650.

SUPPLEMENTARY INFORMATION:

Amendment 39-4068 (46 FR 17539, 17540), AD 81-07-01, applicable to GAF Nomad Models N22B and N24A airplanes, requires modifications to all movable horizontal stabilizer and geared trailing edge trim tabs. Subsequently, it has been found that the horizontal stabilizer instructions in paragraph (a) incorrectly specified use of MS20426AD rivets for all removed AGS pop rivets. MS20470AD rivets should be used in attachment of the .016 inch upper skin panel and AGS 2048-420-BS 1/2 inch pop rivets are suitable for each access panel door installation. Accordingly, paragraph (a) of AD 81-07-01 is being revised to incorporate these changes. In making this revision, the

FAA has determined that no affected airplanes were modified with MS20426AD rivets.

Since this amendment is clarifying in nature and imposes no additional burden on any person, notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, paragraph (a) of AD 81-07-01, Amendment 39-4068 (46 FR 17539, 17540) § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended to read as follows:

"(a) Modify the horizontal stabilizer to incorporate mass balance weights, improved riveting, addition of access panels, and structural reinforcements to the horizontal stabilizer in accordance with Part 2, "ACCOMPLISHMENT INSTRUCTIONS", of Government Aircraft Factories Nomad Service Bulletin NMD-55-10, Revision 1, dated May 2, 1980, or an FAA-approved equivalent. All AGS pop rivets removed as a result of this modification must be replaced with MS20470AD rivets.

Note.—AGS 2048-420-BS 1/2 inch pop rivets are acceptable in the access panel door as specified in Service Bulletin NMD-55-10, Rev. 1."

This amendment becomes effective on June 10, 1982.

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

Note.—The FAA has determined that this document involves revision of a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and procedures (44 FR 11034; February 26, 1979), and certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since it involves modification of only a few aircraft owned by small entities.

This rule is a final order of the Administrator under the Federal Aviation Act of 1958, as amended. As such, it is subject to review only by the Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia.

Issued in Kansas City, Missouri, on May 18, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82-14398 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-ANE-10; Amdt. 39-4382]

Airworthiness Directives; Garrett Turbine Engine Company Engine Models TSE331-3 and TPE331-1, -2, -3, -5, and -6 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In Docket No. 82-ANE-10; Amdt. No. 39-4382, appearing on Page 20562, Vol. 47, No. 93, in the Federal Register of May 13, 1982, a list of 201 Garrett Turbine Engine Company third stage turbine wheels was listed by serial number in an Airworthiness Directive (AD). The serial number for one of these turbine wheels was erroneously stated as 19329. The correct serial number is 18329.

FOR FURTHER INFORMATION CONTACT:

Bill Moring, Aerospace Engineer, Western Aircraft Certification Field Office, Northwest Mountain Region, Los Angeles, California (213) 536-6381.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, Amdt. 39-4382 published in the Federal Register on Page 20562, Vol. 47, No. 93, May 13, 1982, is hereby amended by correcting the serial number of Garrett Turbine Engine Corporation third stage turbine wheel from number 19329 to number 18329.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1345(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on May 20, 1982.

John B. Roach,

Acting Director, New England Region.

[FR Doc. 82-14521 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AWP-6]

Alteration of Control Zone

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of the Douglas, Arizona, Control Zone serving Bisbee-Douglas International Airport so as to reflect the part-time use status of the control zone to coincide with staffing of the Douglas,

Arizona, Flight Service Station and weather reporting.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; Telephone (213) 536-6182.

SUPPLEMENTARY INFORMATION:

History

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to designate part-time use of the Douglas, Arizona, Control Zone. The rule change is minor in nature and does not impose any additional burden on any person. In view of the foregoing, notice and public procedure are unnecessary and the rule may be made effective in less than 30 days.

The Rule

This amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of the Douglas, Arizona, Control Zone by reducing the hours of the control zone. Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in the *Federal Register* on January 2, 1981 (46 FR 455).

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (46 FR 455) is amended, effective 0901 GMT, May 27, 1982, as follows:

§ 71.171 Douglas, Arizona.

Following * * * "northwest of the VORTAC." Add: "This control zone is effective from 0600 to 2100 hours, local time, daily or during specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510, Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1955(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Los Angeles, California, on May 14, 1982.

R. L. Devereaux,

Acting Director, Western-Pacific Region.

[FR Doc. 82-14249 Filed 5-28-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASO-16]

Alteration of Transition Area, Atlanta, Georgia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the Atlanta, Georgia, Transition area by deleting reference to a navigational aid which no longer exists and redesignating that airspace which was previously predicated on the navigational aid. This rule also corrects the names of two airports which are contained in the description.

DATES: Effective date: 0901 G.m.t., July 8, 1982. Comments must be received on or before June 20, 1982.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Attn: Chief, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for comments on the rule

Although this action is in the form of a final rule, which involves altering the description of the Atlanta, Georgia, Transition Area by redesignating existing airspace and correcting the names of two airports, and, thus, was not preceded by notice and public

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

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the description of the Atlanta, Georgia, Transition Area by redesignating an extension which was predicated on the Bruce RBN which has been decommissioned. The airspace which was predicated on the Bruce RBN is required for Instrument Flight Rules (IFR) operations and this rule will redesignate the airspace by reference to the Atlanta ILS Runway 26 localizer course and outer marker. This rule will also correct the name of Charlie Brown County Airport to Fulton County Airport-Brown Field and correct the name of Dobbins AFB/NAS Atlanta to Dobbins AFB. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982. Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to redesignate airspace based on existing air navigational facilities and correct the names of two airports presently contained in the description. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective in less than 45 days after its publication in the *Federal Register*.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., July 8, 1982, as follows:

Atlanta, Georgia—Revised

By deleting the words " * * * within 4.5 miles north and 9.5 miles south of the 091° bearing from Bruce RBM, extending from the 15-mile radius area to 18.5 miles east of the RBN; within 9.5 miles south and 4.5 miles north * * * " and substituting for them the words " * * * within 5 miles north and 11 miles south of Atlanta ILS Runway 26 localizer east course, extending from the 15-mile radius area to 18.5 miles east of the LOM; within 9.5 miles south and 6 miles north * * * " and by deleting the words " * * * Charlie Brown County Airport * * * " and " * * * Dobbins AFB/NAS Atlanta * * * " and substituting for them the words " * * * Fulton County Airport-Brown Field * * * " and " * * * Dobbins AFB * * * "

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

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on May 18, 1982.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 82-14250 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 82-AEA-8]

Alteration of Patuxent River, MD, Restricted Area R-4007B

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: These amendments extend the expiration date of Restricted Area R-4007B, Patuxent River, MD, to January 1, 1983. These actions are necessary because of the U.S. Navy's continued requirement to flight test the F-18 aircraft beyond the current July 1, 1982, expiration date. The restricted area extension is required to provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating

aircraft within the restricted area during the designated period.

EFFECTIVE DATE: July 1, 1982. Comments must be received on or before June 28, 1982.

ADDRESS: Send comments on the rule in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 82-AEA-8, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW, Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert Maxey, Airspace Regulations and Obstructions Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:**Request for Comments on the Rule**

Although these actions are in the form of a final rule, which involves a necessary extension of the expiration date for R-4007B to January 1, 1983, to allow the U.S. Navy to complete flight testing for the F-18 aircraft and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aero-nautical, economic and energy aspects of the rule that might suggest the need to modify the rule. Send comments on environmental and land use aspects to: Commanding Officer, Naval Air Station, Patuxent River, MD 20670.

The Rule

The purpose of these amendments to §§ 71.151 and 73.40 of Parts 71 and 73 of the Federal Aviation Regulations (14

CFR Parts 71 and 73) is to extend the expiration date of R-4007B, Patuxent River, MD, to January 1, 1983. Airspace Docket No. 78-EA-5, effective September 7, 1978, modified R-4007, in part, by designating R-4007B to overlie R-4007A with designated altitudes from 5,000 feet to 17,000 feet MSL. An expiration date of January 1, 1982, for R-4007B was established with provision for an extension on the basis of future review and necessity. In January 1982, the expiration date was extended until July 1, 1982. A further review has been conducted, and it has been determined that an extension of the expiration date of R-4007B to January 1, 1983, is required by the U.S. Navy to complete additional flight testing of the F-18 aircraft. Sections 71.151 and 73.40 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3 dated January 29, 1982.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to extend the expiration date of Restricted Area R-4007B. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Control areas, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.151 and 73.40 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (46 FR 54927), are amended, effective 0901 GMT, July 1, 1982, as follows:

Section 71.151 [Amended]

R-4007B Patuxent River, MD. By deleting the words "July 1, 1982." and substituting for them the words "January 1, 1983."

Section 73.40 [Amended]

R-4007B Patuxent River, MD. By deleting the words "July 1, 1982." and substituting for them the words "January 1, 1983."

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

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is

a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, DC, on May 20, 1982.

B. Keith Potts,

Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 82-14396 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 3 and 375

[Docket No. RM81-40-000; Order No. 233]

Fees Relating to Freedom of Information Act Requests

Issued May 19, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: This final rule amends the Commission's regulations by establishing fees for search and duplication services pursuant to Freedom of Information Act requests and delegates to the Director of the Division of Public Information the authority to grant or deny requests for waiver or reduction of fees.

DATE: Effective June 28, 1982.

FOR FURTHER INFORMATION CONTACT:

Maureen F. Thompson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8033;

Ray A. Huber, Division of Public Information, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8380;

Final Rule

In the matter of fees relating to Freedom of Information Act requests; Docket No. RM81-40-000, Order No. 233. Issued May 19, 1982.

The Federal Energy Regulatory Commission (Commission) is amending its regulations that describe the procedures by which the public may request information and copies of public documents pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552). A new paragraph (k) is added to § 3.8 to establish fees to be charged for search and duplication of all documents requested pursuant to the FOIA. In addition, Part 375 is amended to

delegate to the Director of the Commission's Division of Public Information the authority to grant or deny requests for waiver, or reduction of fees. The purpose of the rule is to permit the Commission to recover the mounting costs of search and duplication services performed by Commission staff in response to FOIA requests.

I. Background

Section 552(a)(4) of the FOIA permits the Commission to promulgate regulations, after notice and comment, specifying a uniform fee schedule for search and duplication services performed by the Commission in response to requests from members of the public under the FOIA. Under the statute, fees must be limited to reasonable standard charges and may provide recovery only of costs directly incurred by the Commission. Fees are to be waived or reduced if the Commission determines that such waiver or reduction is in the public interest because the general public will primarily benefit from furnishing the information to the requester.

Currently, Commission regulations establish fees for only part of the search and duplication services which may be involved in responding to requests under sections 552 (a)(1), (a)(2), and (a)(3) of the FOIA. The regulations provide for fees for duplication services performed by an independent contractor, but do not establish fees for search and duplication services performed by Commission staff. Whether the duplication is done by contractor or staff depends on whether the documents sought by the requester are public documents. If public, the documents are located in the Division of Public Information or in the Commission's central files. Under these circumstances, search by staff is minimal and duplication can be performed by the contractor. However, if the documents are not considered public records and are not stored in the public files, a significant amount of staff time may be spent on search and duplication services to respond to the information request. The Commission estimates that, in practice, staff services are a significant part of the processing of FOIA requests. Approximately 80 percent of the FOIA requests in the first quarter of 1981 required search and duplication services by staff.

The Commission issued a notice of proposed rulemaking on July 31, 1981 (46 FR 39846, August 5, 1981). The Commission received no comments on the proposal. Therefore, this rule is adopted largely as proposed. It provides that the fees imposed for services

performed by staff will depend upon the amount of time spent searching for the document and the number of duplications required. In other words, the methodology adopted bills the requester for the direct costs incurred by the Commission in processing a particular FOIA request.

The Commission is in the process of proposing to collect fees for other services it provides in the course of the administration of its other statutory responsibilities. In the context of these other fees, however, the Commission is proposing to employ a different methodology which reflects the average costs incurred in providing a category of service or benefit. The reason for utilizing different methodologies is that the applicable statutory standards are different. The FOIA requires a uniform fee schedule which recovers only the direct costs incurred by the Commission. However, the Independent Offices Appropriations Act (IOAA) (31 U.S.C. 483a), the statutory authority pursuant to which fees may be charged for other services or benefits, allows for the recovery of the indirect as well as the direct costs incurred by the Commission in providing a service. In addition, the Commission is able to calculate the costs incurred in processing each individual FOIA request. The services for which fees will be assessed under the IOAA, however, are more numerous and complex, and, for practical reasons, do not permit the billing for the costs incurred on an individual basis.

Summary of the Rule

Section 3.8, entitled "Public information and submittals", is amended by adding a new paragraph (k) which establishes the fees and procedures for payment of the fees.

Paragraph (k)(1) contains definitions applicable to paragraph (k) regarding Freedom of Information Act requests and professional and clerical employees.

Paragraph (k)(2) establishes the rates which will be charged for staff search time. The fees depend upon the level of staff engaged in the search and the amount of time spent. A fee of \$10.00 per hour is established for a search conducted by clerical staff. Ten dollars an hour represents, approximately, the average hourly salary (including the cost of fringe benefits) or clerical staff (GS-9 and below) for fiscal year 1982. A fee of \$23.00 per hour is established for a search conducted by professional or managerial staff. This figure represents, approximately, the average hourly salary (including the cost of fringe benefits) of professional and managerial staff (GS-10 and above) for fiscal year

1982. The Commission proposed fees of \$8.00 and \$16.00 respectively in the Notice of Proposed Rulemaking. Those figures reflected fiscal year 1981 salaries only. In the final rule, they have been modified to reflect fiscal year 1982 salaries and to account for the cost of fringe benefits within the salary computation. Search time is charged on the basis of quarter hour increments.

Paragraph (k)(3) provides that the fee to be charged for duplication services is 10 cents per page. Duplication costs were determined by estimating the cost to the Commission of using leased photocopy machines.

Paragraph (k)(4) provides that no fee will be charged for staff search or duplication services in response to one or a series of related FOIA requests, if the assessed fees for those services totals \$5.00 or less. Five dollars represents the estimated cost to the Commission of billing the fees. The purpose of this provision is to relieve the Commission of the billing cost, if that cost is equal to or greater than the assessed fees.

Paragraph (k)(5) provides that requesters may petition the Commission for a waiver or reduction in fees. Section 375.312 delegates to the Director of the Division of Public Information the authority to grant or deny these waivers or to reduce fees. In accordance with paragraph (k)(5), the Director's determination will depend upon whether the general public will primarily benefit if the Commission furnishes the information to the requester without charge or at a reduced rate. Paragraph (k)(5) and § 1.36 provide that an appeal from a denial of these petitions to waive or reduce fees is determined by the Chairman.

Paragraph (k)(5) also provides that the waiver or reduction of fees must be requested at the time the FOIA request is filed with the Commission. The purpose of this requirement is to provide the Director of Public Information with sufficient time to evaluate a waiver or reduction petition, in view of the limited time permitted for response to an FOIA request. The FOIA (5 U.S.C. 552(a)(6)) and § 1.36 of the Commission's regulations require the Commission to determine, within ten working days, whether to comply with an FOIA request.¹ In addition, paragraph (k)(5) provides that each waiver or reduction petition will automatically stay the initiation of the 10-day limitation established by 5 U.S.C. 552(a)(6)(A) until such time as the Commission has agreed

to waive the fee or the requester has agreed to pay the fee that will be assessed. The purpose of this provision is to protect the requester from incurring an obligation to pay before the Commission has ruled on the request for waiver or reduction. If the petition for waiver or reduction specifies that the requester is not waiving the initiation of the 10-day limitation, the Commission will process the petition concurrently with the FOIA request, and bill the requester as it determines appropriate.

Paragraph (k)(5) provides further that the Commission will provide the requester with the requested information only upon payment of the fee due for processing the FOIA request.

Additionally, § 1.36, relating to public information and requests, is amended to cross reference § 3.8(k).

III. Effective Date

This rule is effective June 25, 1982. (Department of Energy Organizational Act, 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 142 (1978); Freedom of Information Act, 5 U.S.C. 552.)

List of Subjects in 18 CFR Part 1

General definitions, Rules of construction

18 CFR Part 3 Administrative practice and procedure, Freedom of information, Organizations and functions (Government agencies)

18 CFR Part 375 Authority delegations (Government agencies), Seals and insignia, Sunshine Act

In consideration of the foregoing, the Commission amends §§ 1.36 and 3.8 and Part 375 of Title 18, Chapter I of the Code of Federal Regulations, as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 1—RULES OF PRACTICE AND PROCEDURES

1. Section 1.36 is amended by inserting between the heading and the text, the following parenthetical:

§ 1.36 Public information and requests.

(See also § 3.8(k) of this Chapter regarding Freedom of Information Act request fees.)

2. Section 1.36 is amended in paragraph (f)(2)(i) by inserting in the first sentence between the words "appeal" and "within" the phrase "of the denial of a Freedom of Information Act request, or a request for waiver or reduction of the fees prescribed in § 3.8 of this Subchapter,".

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS

3. Section 3.8 is amended by inserting between the heading and the text, the following parenthetical:

§ 3.8 Public information and submittals.

(See also § 1.36 of this Chapter regarding public information and Freedom of Information Act requests.)

4. Section 3.8 is amended in paragraph (b) in the eighth sentence by replacing the word "Secretary" with the word "Commission".

5. Section 3.8 is further amended by adding a new paragraph (k) at the end thereof to read as follows:

(k) Fees for Freedom of Information Act requests.

(l) Definitions. For purposes of this paragraph the following definitions apply.

(i) "Freedom of Information Act request" means a written request for public records in the possession of the Commission, which request is filed pursuant to section 552(a)(3) of the Freedom of Information Act (5 U.S.C. 552) and in accordance with § 1.36 of this chapter.

(ii) "Professional employee" means an employee of the Commission whose official grade level is GS-10 or above.

(iii) "Clerical employee" means an employee of the Commission whose official grade level is GS-9 or below.

(2) Search fees. If the Commission response to a Freedom of Information Act request requires search of Commission records, the requester will be charged for the search at the following rates:

(i) \$5.75 per quarter hour for search services performed by a professional employee; and

(ii) \$2.50 per quarter hour for search services performed by a clerical employee.

(3) Duplication fees. If Commission response to a Freedom of Information Act request requires the duplication of documents, and

(i) If the duplication is done by Commission staff, the requester will be charged 10 cents per photocopy, plus postage; or

(ii) If the duplication is done by an independent contractor, the requester will be charged in accordance with a uniform fee schedule for photocopies, microfiche, and microfilm duplication, plus postage. The uniform fee schedule is set by contract with the independent contractor and may be obtained in

¹ In unusual circumstances, an extension of time for 10 working days may be granted. 5 U.S.C. 552(a)(b)(B), 18 CFR 1.36(f)(3).

person, by telephone, or by mail from the Division of Public Information.

(4) *No fees charged below minimum.* If the total fees assessed for search and duplication services performed by Commission staff in response to a Freedom of Information Act request, or to a series of related requests, total \$5.00 or less, the Commission will not charge the requester for those services.

(5) *Waiver or reduction of fees.* (i) At the time a Freedom of Information Act request is filed with the Commission, the requester may petition the Commission for waiver, or reduction, of the fees described in this paragraph. The requester should show that waiver or reduction of the fees is in the public interest because furnishing the information will primarily benefit the general public. If the Director of the Division of Public Information determines that the waiver, or reduction, of fees is in the public interest, the requested information will be furnished without charge or at a reduced rate.

(ii)(A) Except as provided in paragraph (k)(5)(ii)(B) of this section, submission of a petition for a waiver or reduction stays initiation of the 10-day limitation established by 5 U.S.C. 552(a)(6)(A) until the Director of the Division of Public Information agrees to waive or reduce the fee as requested, or, if the request is denied in whole or in part, until the requester agrees to pay the fee that will be assessed by the Commission.

(B) The petition for waiver or reduction may include a statement that the initiation of the 10-day limitation established by 5 U.S.C. 552(a)(6)(A) is not waived, in which case the Commission will process the petition for waiver and reduction concurrently with processing the Freedom of Information Act request, and bill the requester as it determines appropriate.

(iii) The requester may appeal any denial of a request for waiver or reduction to the Chairman pursuant to § 1.36.

(6) *Method of payment.* Upon notice from the Commission of the fee due for processing a Freedom of Information Act request, the requester shall make payment by certified check or money order payable to the United States Treasury. The Commission shall, upon receipt of payment, provide the requester with the requested information and materials.

PART 375—THE COMMISSION

6. Part 375 is amended in the table of contents by adding, in the appropriate

numerical order, a new section number and heading as follows:

* * * * *

375.312 Delegations to the Director of the Division of Public Information.

7. Part 375 is amended in Subpart C by adding a new § 375.312 to read as follows:

§ 375.312. Delegations to the Director of the Division of Public Information.

The Commission authorizes the Director of the Division of Public Information to waive or reduce fees in accordance with § 3.8 of this chapter.

[FR Doc. 82-14377 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Permanent State Regulatory Program of New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is modifying the deadlines for New Mexico to meet some of the conditions of approval of the State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) as OSM has determined that the State's satisfaction of these conditions is likely to be affected by changes to the Federal permanent program rules at 30 CFR Chapter VII which are currently being considered by OSM. In addition the Secretary is removing two of the conditions of approval of the State's program, as OSM has determined the conditions are moot as a result of the revised Federal standard for State program approval which allows States to adopt alternatives to the Federal regulations at 30 CFR Chapter VII provided they are no less effective than the Federal rules in meeting the purposes of the Act.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Under 30 CFR 732.13(i), the Secretary may conditionally approve a State permanent regulatory program which

contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The correction of each deficiency is a condition of the approval. The conditional approval terminates if the conditions are not met according to the schedule. The dates are established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

The New Mexico program was conditionally approved on December 31, 1980 (45 FR 86459-86490). In that document the Secretary published a schedule for the State to meet each of the 12 conditions of approval of the State program. The schedule called for New Mexico to submit provisions to satisfy conditions "a"-"d" and "f"-"i" by July 1, 1981, and a provision to meet condition "e" by February 28, 1982.

Information pertinent to the general background revisions, modifications, and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments and explanation of conditions of approval of the New Mexico program can be found in the December 31, 1980 Federal Register (45 FR 86459).

Since the Secretary's conditional approval of the New Mexico program OSM has proposed several revisions to the Federal permanent program rules which served as the standard for approval of New Mexico's program. Because OSM was concerned that States with conditionally approved programs would be expending valuable time pursuing program amendments to meet Federal requirements that would be changed, OSM asked each State to identify those conditions for which it would like an extension of the deadline for meeting them. New Mexico requested that the deadline for the State to meet conditions "a"-"d" and "f"-"i" be extended until February 28, 1982. On October 30, 1981 (46 FR 54070), OSM announced its decision to grant New Mexico's request. Subsequently, the State asked for a second extension that would establish a new deadline for the State to meet conditions "a"-"d" and "e"-"i". The State offered as its reason for requesting a further extension the fact that OSM has not yet finalized amendments to the permanent program rules. The State asserted that some of these amendments might directly affect new Mexico's satisfaction of the

conditions. In accordance with the State's request, OSM issued a notice in the Federal Register proposing that the deadline for the State to meet those eleven conditions be extended until March 15, 1983, (47 FR 7855, February 23, 1982).

In that notice OSM indicated that it would consider alternatives to a March 15, 1983, deadline for the State to meet all eleven conditions. OSM stated that it would consider other options based on its reexamination of the conditions in light of the following factors. First, OSM stipulated that it would take into consideration the promulgation of revisions of the Federal regulations at 30 CFR Parts 730-732 which govern the standards for approval of State programs. The revised standards which were published October 28, 1981 (46 FR 53376-53384), allow States to adopt alternatives to the Federal regulations, provided they are "no less effective than" the Federal rules in meeting the purposes of the Act.

In a letter to OSM dated December 23, 1981, Mr. Ed Kelly, Chief, New Mexico Bureau of Surface Mining, requested that, in particular, OSM reevaluate conditions "a" and "l" in light of the revised standard for State program approval. In his letter, Mr. Kelly provided information to demonstrate that the provisions which are the subject of conditions "a" and "l" are no less effective than the Federal rules in meeting the purposes of the Act. In the February 23, 1981, notice of proposed rulemaking OSM stated that when reevaluating the conditions in light of the revised standard, OSM would take into consideration the information submitted by Mr. Kelly. OSM also indicated that it would review not only conditions "a" and "l" as requested by the State but all of the conditions of approval on New Mexico's program in order to determine whether any of the existing State provisions which are the subject of conditions could be approved under the revised standard. OSM indicated that it would remove any conditions judged to be moot in light of the revised standard of State program approval.

OSM also specified that it would consider the revisions to the Federal permanent program regulations that have been or will be proposed, but have not yet been finalized. OSM stated that it would reexamine all the conditions of approval of New Mexico's program to determine whether revisions to the Federal rules were likely to have a bearing on changes the State is required to make to satisfy conditions.

In addition OSM specified that it would consider the possibility of

establishing two dates by which the State would be required to submit provisions—one date for New Mexico to submit provisions to meet conditions that would not be affected by OSM rule changes and a second date by which the State would submit provisions to satisfy conditions that might be affected by OSM rule changes.

The February 23, 1981, notice requested comments not only on the proposed March 15, 1983, deadline but on all the options discussed including the proposal to remove conditions deemed unnecessary as a result of the modified standard for State program approval.

Secretary's Findings

The Secretary has completed his reexamination of the conditions and of the public comments received in response to the notice of proposed rulemaking and has made the following determinations:

Conditions b, c, f, g and i

Concerning conditions "b", "c", "f", "g" and "i" the Secretary has determined that neither the rule changes OSM is contemplating nor the revised standard for State program approval has a significant bearing on the State's satisfaction of these conditions and, therefore, he is requiring the State to submit amendments to satisfy these conditions by July 31, 1982. As noted above, in the notice of proposed rulemaking OSM indicated that it was considering the option of establishing one deadline for the State to meet conditions that would not be affected by OSM rule changes and a second date for changes that would be affected by those changes. OSM specified that the date likely to be considered for conditions not affected by changes to the Federal rules was June 1, 1982. The Secretary is establishing a deadline of July 31, 1982 instead of June 1, 1982, because New Mexico has advised OSM that the State will require the time between issuance of this notice and July 31 to carry out the rulemaking procedures necessary to satisfy the conditions.

Condition a

The Secretary finds he can remove condition "a" which calls for New Mexico to adopt regulations which include requirements for keyway cuts and rock toe buttresses in accordance with 30 CFR 816.71(i). OSM's regulation requires that keyway cuts be constructed where the slope in the disposal area exceeds 1v:2.8h (36%) or such lesser slope as may be designated by the regulatory authority. The Federal regulation also requires that where the

toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and keyway cuts. The State's regulation at 20-71(i) is similar to the Federal rule with the exception that it does not specify that keyway cuts shall be constructed where the slope in the disposal area exceeds 36%. However, New Mexico's regulation does specify that in all instances in which the slope in the disposal area exceeds 36% the fill shall be designed and constructed using the services of a professional engineer who shall ensure stability of the fill and the foundation. Also, New Mexico requires that where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Section 9-35(c) to determine the size of rock toe buttresses and keyway cuts. The Secretary has determined that although the State's provision is not identical to the Federal rule, it is no less effective in assuring that the fill will be designed and constructed to assure stability in accordance with Section 515(b)(22) of the Act. Therefore, the Secretary is removing condition "a".

Condition k

The Secretary finds he can remove condition "k" which requires New Mexico to submit regulations concerning tree stocking rates consistent with 30 CFR 816.117. New Mexico regulation 20-117 does not contain specific stocking rates for trees and shrubs as in 30 CFR 816.117. New Mexico regulation 20-117(b)(1) places the determination of minimum stocking rates under the authority of the State forester. In a letter dated September 19, 1980, to Ed Kelly, Chief, Bureau of Surface Mining, the State forester explained the bases for his determinations of minimum stocking rates. In his conditional approval of the New Mexico program on December 31, 1980 (finding 4(c)(x), 45 FR 86166), the Secretary found the letter from the State forester to Mr. Kelly to be an insufficient basis on which to find that the State forester would assure stocking at rates which equal the federal standards. OSM has reexamined condition "k" in light of the revised standard for State program approval. Upon a more careful scrutiny of the State forester's letter together with the State's regulations at 8-19, 20-116 and 20-117, the Secretary has determined that the State's provisions are no less effective than the Federal rules in meeting the requirements of Sections 515(b)(19) and 516(b)(6) of the Act. On permit areas 40 acres or less in size OSM's regulations require a minimum of 400 woody plants per acre. On steep slopes the minimum number of

woody plants shall be 600 per acre. Commercial forest lands are required to have 450 trees or shrubs per acre. The State's regulation provides for the State forester's establishment of a minimum acceptable level of tree and shrub stocking on a site-by-site basis using techniques recognized locally as acceptable reforestation practices. In accordance with New Mexico regulation 8-19, the permit applicant will be required to submit information that will enable the State forester to adequately predict the potential for reestablishing vegetation on the permit area prior to the regulatory authority's approving the permit. Furthermore, success of revegetation can be determined through the use of reference areas data or through the development of an historic record of premining conditions as the basis for comparison to the postmining revegetation.

To satisfy the requirements for bond release the permittee must demonstrate that the stocking of trees and shrubs on the revegetated area is equal to 90% of the stocking of the reference area or at least 90% of the stocking number developed on the basis of the historic record or at least 90% of the stocking rate established by the State forester, whichever is applicable. The Secretary has determined that New Mexico's procedures will ensure that the cover of trees and shrubs will be sufficient for adequate use of the growing space after surface coal mining operations. Because the Secretary has determined that the State's regulations are no less effective than OSM's rules in meeting the purposes of the Act, he is removing condition "k".

Condition l

With regard to condition "l" concerning the protection of endangered species the Secretary considered the information which Mr. Kelly provided in his letter of December 23, 1981. In that letter, Mr. Kelly asserts that the protection of endangered species is guaranteed under New Mexico's cooperative agreement with the Department of the Interior for conducting a program pursuant to Section 6(c) of the Endangered Species Act. The Secretary finds, however, that the cooperative agreement to which Mr. Kelly referred authorizes New Mexico to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife, and does not fulfill the State's obligation to provide protection for all species including migratory species or species which may pass through periodically, but do not establish permanent resident status.

Consequently, the Secretary has determined that in order to insure the protection intended by Congress, New Mexico should modify its program as specified in condition "e" and amend its program to provide protection for all species listed by the Secretary pursuant to the Endangered Species Act of 1973 as amended. The Secretary is allowing the State until July 31, 1982, to make the necessary correction.

Conditions e, h and j

Changes to the Federal rules which OSM is considering will have a bearing on the State's satisfaction of condition "j", concerning the State's bonding regulations; condition "e", relating to the award of attorneys' fees against the State; and condition "h", concerning regulations governing the Small Operators Assistance Program. As OSM does not expect to finalize changes to the Federal regulations governing the Small Operators Assistance Program or the regulations relating to the award of attorneys' fees until the latter part of 1982, and as OSM's timetable for issuing final changes to the Federal bonding rules has been set back, the Secretary is establishing a deadline of March 15, 1983, for the State to meet conditions "e", "h" and "j".

Public Comment

In response to the February 23, 1982, Federal Register notice proposing an extension of the deadlines for New Mexico to meet eleven of the conditions of approval, OSM received three written comments.

Mr. Paul E. Frye, Attorney-at-Law for the DNA-People's Legal Service, Inc., commented in reference to the Secretary's approval on October 30, 1981, of an extension of the deadline for New Mexico to meet eleven of the conditions of approval from July 1, 1981, until February 28, 1982. Mr. Frye asserted that because the State did not meet the conditions by July 1, 1981, and because no extension past July 1 had been granted by July 1, the State's program submission is a nullity.

Although the commenter's point is not directly related to this rulemaking, his comment is being addressed nonetheless. It should be noted that New Mexico requested an extension of the July 1, 1981, deadline in response to an inquiry from OSM. As mentioned above, because OSM was concerned that States with conditionally approved programs would be expending valuable time pursuing program amendments to meet Federal requirements that would be changed, OSM asked each State to identify those conditions for which it would like an extension. Although the

Secretary did not announce his approval of an extension for New Mexico in the Federal Register until October, 1981, the State made its request prior to that date. OSM believes that termination of the State's program because of administrative delays in announcing the Secretary's decision to grant the extension would not be justified and would not be in the best interests of either citizens, OSM or the State.

The Kaiser Steel Corporation commented that it supported the proposal to extend the deadline for New Mexico to meet conditions of approval of the State regulatory program. The commenter urged that OSM extend the deadline until March 15, 1983, for all conditions, and not make a distinction, for the purposes of the deadline, between conditions that would not be affected by OSM rule changes and conditions that might be affected by OSM rule changes. The commenter maintained that pending evaluation of all of the OSM proposed changes, it would be fairly difficult to determine what New Mexico rules would not be affected by changes to the Federal rules.

OSM believes there must be adequate justification to extend the deadline for the State to meet conditions. In reexamining the conditions of approval of New Mexico's program, OSM determined that certain of the conditions would clearly not be affected by rule changes which OSM is contemplating or has proposed. As discussed in the findings, the Secretary is requiring the State to correct such conditions by July 1, 1982, rather than March 15, 1983, to avoid delay in New Mexico's satisfaction of the conditions while allowing the State sufficient time for the administrative and regulatory procedures necessary to satisfy the conditions.

A third comment was received on the proposed extension from the Environmental Policy Institute, the New Mexico Citizens for Clean Air and Water and the Sierra Club. The commenters objected to the Secretary's granting any extensions. They asserted that changes to the New Mexico program will always be required to reflect changes in OSM's rules and that States should not be allowed to delay making required changes on the expectation that certain particular changes are going to occur. OSM believes that when the Agency clearly anticipates making changes to the Federal rules in the not too distant future, it is not in the best interest of either OSM, the State or citizens to require the State to expend valuable

time and resources to meet the existing Federal requirements.

The commenters also objected to OSM's reexamination of all the conditions of approval of the State program to determine if any are moot as a result of OSM's revised standard for State program approval. They stated that review of conditions "a" and "l" was proper because the State submitted new material to justify the current State standard, but asserted that review of all the other conditions violated the requirement of the Federal rules that the State demonstrate in its submission that the "no less effective than" standard has been met.

In reviewing each of the conditions of approval of New Mexico's program, OSM examined the material already submitted by the State and, in the case of conditions "a" and "l" the new material submitted. OSM made its determination of whether removal of a condition was justified under the revised Federal standard based on the material which was available to the Agency. This documentation was also available to the public for review during the comment period. If the material available to OSM did not provide adequate justification for removal of a condition, OSM did not develop the necessary rationale for the State. Instead, if OSM believed that a condition might be removed if additional clarification or justification were provided, then a statement to that effect was included in the finding (for example, see finding 2). Hence, OSM believes that the burden of showing that the existing State regulation is adequate under the revised standard for approval has been on the State and not on OSM and the public.

With regard to condition "a" the commenters also stated that New Mexico has failed to show that its standards for fills are no less effective than the Federal standards in meeting the purposes of the Act. Based on the available material, OSM believes that the State's regulation is adequate under the revised Federal standard for the reasons provided in finding 1.

Concerning condition "l" the commenters indicated that New Mexico limits protection of endangered species to those "indigenous" to the State and, therefore, the State's existing provision is not as effective as the Federal rule. OSM agrees with the commenters' point as noted in finding 3.

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C.

1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance with the Regulatory Flexibility Act.* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. *Compliance with Executive Order No. 12291.* On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from Sections 3, 4, 6 and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 931 of Title 30 is amended as set forth below.

Dated: May 19, 1982.

William P. Pendley,

Acting Assistant Secretary for Energy and Minerals.

PART 931—NEW MEXICO

§ 931.11 [Amended]

1. 30 CFR 931.11 (a) and (k) are removed and reserved.

2. 30 CFR 931.11 (b), (c), (f), (g), (i) and (l) are amended by substituting "July 31, 1982", for "February 28, 1982", each time it appears.

3. 30 CFR 931.11 (e), (h) and (j) are amended by substituting "March 15, 1983" for "February 28, 1982", each time it appears.

(Sec. 503, Pub. L. 95-87, 91 Stat. 470 (30 U.S.C. 1253))

[FR Doc. 82-14505 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 931

Removal of One Condition of Approval of the New Mexico Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: New Mexico has satisfied one of the conditions of approval of the New Mexico program under the Surface Mining Control and Reclamation Act of

1977 (SMCRA) by submitting a program amendment. New Mexico received conditional approval of its permanent program effective Dec. 31, 1980, subject to the correction of twelve minor deficiencies. New Mexico submitted to the Department of the Interior a provision satisfying one of the deficiencies on February 28, 1982. Hence, the Secretary is removing one of the twelve conditions of approval of New Mexico's program.

EFFECTIVE DATE: The removal of the condition is effective on or before May 27, 1982.

FOR FURTHER INFORMATION CONTACT:

Robert Hagen, State Office Director, Office of Surface Mining, 219 Central, NW., Albuquerque, New Mexico 87102. Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION: On February 28, 1980, OSM received a proposed regulatory program from the State of New Mexico. On December 31, 1980, following a review of the proposed program as outlined in 30 CFR 732, the Secretary approved the proposed program conditioned on the correction of 12 minor deficiencies (45 FR 86459-86490).

In accepting the Secretary's conditional approval, New Mexico agreed to submit provisions to satisfy conditions "a"-"d" and "f"-"l" by July 1, 1981, and a provision to meet condition "e" by February 28, 1982. Subsequently, New Mexico requested that the deadline for the State to meet conditions "a"-"d" and "f"-"l" be extended until February 28, 1982. On October 30, 1981 (46 FR 54070), OSM announced its decision to grant New Mexico's request. The State recently asked for a second extension that would establish a new deadline for the State to meet conditions "a"-"c" and "e"-"l". On February 23, 1982, OSM issued a notice inviting comment on the proposal to extend the deadline for the State to meet those 11 conditions until March 15, 1983. OSM is currently giving consideration to the State's request for a second extension and will announce its final decision under separate rulemaking.

On February 28, 1982, New Mexico submitted to OSM a policy statement to satisfy condition "d". That condition specifies that the approval found in § 931.10 will terminate on February 28, 1982, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations which include the requirements for posting and publishing notices of show cause orders that may be issued in accordance with 30 CFR 842.13(c)(1)-(3) and (d), or

otherwise amends its program to accomplish the same result.

To satisfy this condition, the State submitted a statement of its procedures for posting and publishing notices of show cause orders. The statement is signed by Mr. Emery C. Arnold, director of the New Mexico Mining and Minerals Department, and dated February 19, 1982. Public comment was invited on the material submitted by the State for 30 days ending April 22, 1982 (47 FR 12361, March 23, 1982). OSM received four comments on the State's provision. A public hearing that was scheduled to be held on April 16, 1982, was cancelled because no one expressed an interest in presenting testimony at the hearing.

After reviewing the policy statement submitted by the State and the public comment received on the State's provision, the Secretary has determined that the amendment submitted by the State corrects the program deficiency identified in condition "d". Accordingly, the condition as specified in 30 CFR 931.11(d) is hereby being removed.

Public comment: In response to the March 23, 1982, notice inviting comment on the amendment submitted by New Mexico, OSM received four written comments.

The Department of Agriculture commented that New Mexico's proposed amendment satisfies the deficiency identified in condition "d". As noted above, the Secretary agrees that the State has met the condition.

The Southwest Research and Information Center noted that New Mexico's procedures for publishing show cause orders require the publication of the order only in the county in which the surface mining and reclamation operations are conducted. OSM's regulations require that the notice be published "in a newspaper of general circulation in the area of the surface coal mining and reclamation operations" (30 CFR 843.13(c)(2)).

The commenters asserted that the State's provision does not satisfy the Federal intent that all affected parties receive notice, because the State's procedures limit the "area" to the county.

OSM believes that the State's provision will provide for adequate notice to affected parties because the circulation of newspapers is not restricted by county lines but generally extends to all interested persons within a general area. OSM feels confident that New Mexico will publish notice of show cause orders in the newspaper most likely to be read by affected persons.

The Southwest Research and Information Center also commented that New Mexico's procedures exclude the

requirement that notice of any hearing to be held as a result of issuance of a show cause order be issued immediately. Although the State's procedures do not state explicitly that a notice of a hearing be published immediately, OSM interprets the State's procedures to mean that notices will be published promptly.

OSM also received a comment from Mr. Paul E. Frye, attorney-at-law for the DNA-People's Legal Services, Inc. Mr. Frye commented on the Secretary's approval on October 30, 1981, of an extension of the deadline for New Mexico to satisfy condition "d" from July 1, 1981, until February 28, 1982. Although the commenter's point is not directly related to this rulemaking, his comment is being addressed nonetheless. It should be noted that New Mexico requested an extension of the July 1, 1981, deadline in response to an inquiry from OSM. As mentioned above, because OSM was concerned that States with conditionally approved programs would be expending valuable time pursuing program amendments to meet Federal requirements that would be changed, OSM asked each State to identify those conditions for which it would like an extension. Although the Secretary did not announce his approval of an extension for New Mexico in the *Federal Register* until October, 1981, the State made its request prior to that date. OSM believes that termination of the State's program because of administrative delays in announcing the Secretary's decision to grant the extension would not be justified and would not be in the best interests of either citizens, OSM or the State.

Mr. Frye also commented that New Mexico's procedures for posting and publishing show cause orders are not binding and, therefore, cannot be said to constitute a fully implemented regulation or an effective amendment to the New Mexico program. The condition of approval, as established by the Secretary, requires the State to correct its program by regulatory amendment or any other means which "accomplishes the same result". OSM believes that New Mexico's procedures for posting and publishing notices adequately addresses the condition of approval. OSM assumes the State will implement the procedures as written and insure that proper notice of show cause orders is provided to all affected parties. If at any time OSM has reason to believe the State is not effectively implementing these procedures, then, at that time, the Agency will take appropriate steps to insure that the State implements the provisions of its program as approved.

The Environmental Protection Agency commented that as the modification does not concern air or water quality standards promulgated under the Clean Water Act or the Clean Air Act, the Agency has no objection to OSM's approving the modification.

Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Compliance with the Regulatory Flexibility Act.* The Secretary hereby determines that this proposed rule will not have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

3. *Compliance with Executive Order No. 12291.* With respect to regulations concerning satisfaction of conditions of approval of State regulatory programs under SMCRA, OSM has been granted a categorical exemption from the requirement to prepare a Regulatory Impact Analysis pursuant to Executive Order No. 12291, by a letter from the Office of Management and Budget dated August 28, 1981.

4. The Environmental Protection Agency transmitted its written concurrence on the amendatory provision addressed in this notice.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 931 of Title 30 is amended as set forth herein.

Dated: May 21, 1982.

William P. Pendsley,

Acting Assistant Secretary, for Energy and Minerals.

PART 931—NEW MEXICO

1. 30 CFR 931.10 is revised to read as follows:

§ 931.10 State Regulatory program approval.

The New Mexico State Program as submitted on February 28, 1980, and amended and clarified on June 11, 1980, August 7, 1980 and September 10, 1980 is conditionally approved, effective December 31, 1980. The amendment to New Mexico's program submitted February 28, 1982, is approved effective upon publication. Copies of the approved program together with copies of the letter of the New Mexico Energy

and Minerals Department Division of Mining and Minerals agreeing to the conditions in 30 CFR 931.11, are available at:

(a) Energy and Minerals Dept., Mining and Minerals Division, 525 Camino De Los Marquez, Santa Fe, NM 87501

(b) Office of Surface Mining, Reclamation and Enforcement, 219 Central N.W., Albuquerque, N.M. 87102

(c) Office of Surface Mining, Reclamation and Enforcement, Administrative Record Room, 1100 L St., N.W., Washington, D.C.

2. 30 CFR 931.11 is amended by removing and reserving paragraph (d).

§ 931.11 Conditions of State Program Approval.

* * * * *

(d) [Reserved]

* * * * *

(Sec. 503, Pub. L. 95-87, 91 Stat. 470 (30 U.S.C. 1253))

[FR Doc. 82-14506 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 944

Permanent State Regulatory Program of Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is modifying the deadline for Utah to meet conditions "f" and "h" of approval of the State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As the effective deadline for the State to satisfy the condition passed during the time the Secretary was considering the State's request for an extension, the Secretary is establishing a new deadline of September 1, 1982, for the State to meet condition "f". As OSM does not expect to finalize changes to the Federal rules affecting the State's compliance with condition "h" until the latter part of 1982, the Secretary is extending the deadline for the State to meet that condition until January 1, 1983.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone (202) 343-5351.

SUPPLEMENTARY INFORMATION: On March 13, 1979 (44 FR 15311-15463), the Secretary promulgated final rules for the permanent regulatory program under the Act.

Certain provisions of the rules (Parts 730-732) establish the procedures for the submission, review, and decision on State permanent regulatory programs whereby the State assumes primary jurisdiction to regulate surface coal mining under the Act. Under § 732.13(i), the Secretary may conditionally approve a State program which contains minor deficiencies if the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The schedule is established in consultation with the State, based on the regulatory and administrative needs of the State and the time required for changes or legislative procedures.

The Utah program was conditionally approved on January 21, 1981 (46 FR 5899-5915). In that document the Secretary published a schedule for the State to meet each of 12 conditions on the State program. That schedule called for Utah to submit provisions to satisfy conditions "a"-"e" by December 1, 1981, and provisions to meet conditions "f"-"i" by July 1, 1981.

Since the Secretary's conditional approval of the Utah program, OSM has proposed several revisions to the Federal permanent program rules which served as the standard for approval of Utah's program. Because OSM was concerned that States with conditionally approved programs would be expending valuable time pursuing program amendments to meet Federal requirements that would be changed, OSM asked each State to identify those conditions for which it would like an extension of time to meet.

Utah requested that the deadline for the State to meet conditions "f", "g" and "h" be extended until January 1, 1982. On October 30, 1981 (46 FR 54070), OSM announced its decision to grant Utah's request.

In December 1982, Utah requested a second extension that would establish a new deadline for the State to meet conditions "f" and "h". The State offered as its reason for requesting a further extension the fact that OSM has not yet finalized amendments to the permanent program rules. The State asserted that some of these amendments might directly affect Utah's satisfaction of the two conditions. In accordance with the State's request, OSM issued a notice in the *Federal Register* proposing that the deadline for the State to meet those two conditions be extended until January 1, 1983 (46 FR 7266-7267, February 23, 1982). Public comments were invited for 30 days ending March 22, 1982. No comments were received.

In that notice OSM indicated that it would be considering alternatives to a January 1, 1983, deadline for the State to

meet the two conditions. OSM stated that it would consider other options based on its reexamination of the two conditions in light of the following factors:

1. The first was promulgation of revisions of the Federal regulations at 30 CFR 730-732 which govern the standards for approval of State programs. The revised standards which were published October 28, 1981 (46 FR 53376-53384), allow States to adopt alternatives to the Federal regulations, provided they are "no less effective than" the Federal rules in meeting the purposes of the Act. OSM invited comment on the Agency's proposal to remove one or both of the conditions if judged to be moot in light of the revised standard for State program approval.

2. Other factors considered were the revisions to the Federal permanent program regulations that have been or will be proposed, but have not yet been finalized. OSM stated that it would reexamine both of the conditions to determine whether revisions to the Federal rules were likely to have a bearing on changes the State is required to make to satisfy conditions.

OSM has given consideration to the State's request for an extension and reviewed each of the conditions in light of the above factors. OSM has determined that neither the rule changes OSM is contemplating nor the revised standard for State program approval has a significant bearing on the State's satisfaction of condition "f," which requires Utah to adopt standards for a reduced highwall. Therefore, the Secretary does not believe an extension until January 1, 1983, for Utah to meet that condition is warranted. As the effective deadline for the State to satisfy the condition passed during the time the Secretary was considering the State's request for an extension, the Secretary is establishing a new deadline of September 1, 1982, for the State to meet condition "f." This should allow the State sufficient time for administrative or rulemaking procedures required to comply with the condition.

OSM has determined that changes to the Federal rules which the Agency is contemplating will almost certainly have a bearing on the State's satisfaction of condition "h". That condition calls for Utah to adopt a regulation which prohibits lifts for valley fills greater than four feet and a program provision to require Federal approval for the waiver of the underdrain requirements for valley fills. As OSM does not expect to finalize changes to the Federal rules affecting the State's compliance with condition "h" until the latter part of

1982, the Secretary is extending the deadline for the State to meet that condition until January 1, 1983.

Other Information: On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for all actions to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB is not needed for this extension.

This rule is deemed not to be a major Federal action within the meaning of section 102(2)(c) of NEPA under sections 501(a) or 702(d) of SMCRA. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment, EIS or FONSI.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant economic effect on a substantial number of small entities as the rule is essentially a timing change with no direct or indirect impact on small entities.

The primary author of this rule is Mary Tisdale, State Program Specialist, Division of State Program Assistance, Program Operations and Inspection, Office of Surface Mining. Telephone (202) 343-5361.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 944 of Title 30 is amended as set forth herein.

Dated: May 19, 1982.

William P. Pendley,
Acting Assistant Secretary for Energy and Minerals.

PART 944—UTAH

1. 30 CFR 944.11 is amended by revising paragraphs (f) and (h) as follows:

§ 944.11 Conditions of State Regulatory Approval.

(f) The approval in § 944.11 will terminate on September 1, 1982, unless Utah submits to the Secretary by that date copies of fully enacted regulations adopting standards for the reduction of highwalls in UMC 817.101(b)(1) to be consistent with 30 CFR 817.101 and section 510 of SMCRA, or otherwise amends its program to accomplish the same result.

(h) The approval in § 944.11 will terminate on January 1, 1983, unless Utah submits to the Secretary by that date, copies of fully enacted regulations specifying that underdrains are required in all valley fills unless a waiver is granted in connection with an experimental practice approved by OSM, in UMC 817.72(b)/SMC 816.72(c) and specifying lifts for valley fills will not be greater than four feet, or less, if required by the regulatory authority, in UMC 817.72(c)/SMC 816.72(c) consistent with 30 CFR 817.72(c), or otherwise amends its program to accomplish the same result.

(Sec. 503, Pub. L. 95-87, 91 Stat. 407 (30 U.S.C. 1253))

[FR Doc. 82-14451 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 948

Permanent State Regulatory Program of West Virginia

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior is modifying the deadline for West Virginia to meet certain conditions of approval of the State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977. Inasmuch as the next regular session of the West Virginia Legislature does not begin until January, 1983, the Secretary is allowing the State until May 1, 1983, to meet all the conditions of the program approval which require legislative action. In addition the dates for meeting the provisions of Conditions 18 and 25 are being extended until November 1, 1982, to coincide with the date of the remaining conditions.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Division of State Program Assistance, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On March 13, 1979, the Secretary promulgated final rules for the permanent regulatory program under the Act (44 FR 15311-15463). Certain provisions of the rules (Parts 730-732) established the procedures for the submission, review and decision on State permanent regulatory programs whereby a State assumes primary jurisdiction to regulate surface coal

mining under the Act. Under § 732.13(i), the Secretary may conditionally approve a State program which contains minor deficiencies if the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State, based on the regulatory and administrative needs of the State's permanent program and the Act, and the time required for changes to be adopted under State rulemaking or legislative procedures.

The West Virginia program was conditionally approved on January 21, 1981 (46 FR 5915-5956). In the notice of approval, the Secretary published the schedule for West Virginia to resolve each of the 35 conditions on the approval of the State's regulatory program. On October 30, 1981, a notice was published in the Federal Register modifying the deadlines for seven States, including West Virginia, to meet conditions of their approved State programs (46 FR 54070-54071). In that notice, the Secretary modified the original deadline for 32 of the conditions in the Secretary's approval of the West Virginia program.

In a letter to the Director of OSM, dated February 23, 1982, the West Virginia Department of Natural Resources indicated that it would like an extension for meeting the conditions of approval as listed in the Secretary's January 21, 1981, decision (See Administrative Record No. WV 423). The State indicated in its letter that it needed sufficient time for the West Virginia Legislature to act during the next regular session, thus a six month extension of the November 1, 1982, deadlines was requested for all conditions requiring legislative action. Also, the State indicated that in the interest of consistency and stability, an extension of the remaining conditions should be granted to coincide with the requested six month extension of the November 1, 1982, deadlines. On March 19, 1982, the Director of OSM published a proposed rule to extend the schedule for West Virginia to meet the conditions of approval of its approved permanent regulatory program under the Act (47 FR 11885-11886). Public comments were invited until April 5, 1982.

In a telephone conversation of April 13, 1982, (Administrative Record No. WV 429) Director Callaghan of the West Virginia Department of Natural Resources was requested to indicate which of the 35 conditions would require legislative action. He stated that Mr. Dennis Abrams of the State Attorney General's office would provide this information. On May 4, 1982, Mr.

Abrams was contacted (Administrative Record No. WV 431) and agreed that Conditions 1, 3, 4, 5, 19, 24, 26-29 and 31-34 would require legislative action. He was informed that OSM would recommend that these conditions be extended to May 1, 1983, and that Conditions 18 and 25 be extended to November 1, 1982. All other conditions would remain unchanged since they did not require any legislative action.

Inasmuch as the next regular session of the West Virginia Legislature does not begin until January, 1983, the Secretary is accepting the OSM recommendation and allowing the State until May 1, 1983, to meet all the conditions of the program approval which require legislative action. In addition the dates for meeting the provisions of Conditions 18 and 25 are being extended until November 1, 1982, to coincide with the date of the remaining conditions.

Public Comments: Although public comments were requested, none were received.

Other Information: The Office of Management and Budget (OMB) has granted OSM an exemption for sections 3, 4, 7, and 8 of Executive Order 12291 for all actions to approve or conditionally approve state regulatory programs or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this extension.

This rule is deemed not to be a major Federal action within the meaning of section 102(2)(c) of NEPA. It is hereby designated as a categorical exclusion from the NEPA process. Therefore, this rule is exempt from the requirements of an Environmental Assessment or Environmental Impact Statement.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I have certified that this rule will not have a significant economic effect on a substantial number of small entities as the rule is essentially a timing change with no direct or indirect impact on small entities.

The primary author of this rule is Thomas Morgan, Regulatory Program Specialist, West Virginia State Office, Office of Surface Mining, Charleston, West Virginia 25301. Telephone (304) 347-7158.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Therefore, for the reasons set out in the preamble 30 CFR Part 948 is amended as set forth herein.

Dated: May 20, 1982.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 948—WEST VIRGINIA

* * * * *

§ 948.11 [Amended]

1. 30 CFR 948.11(a) (1), (3), (4), (5), (19), (24), (26)-(29) and (31)-(34) are amended by substituting "May 1, 1983," for each date contained therein.

2. 30 CFR 948.11(a) (18) and (25) are amended by substituting "November 1, 1982," for the dates contained therein.

* * * * *

(Sec. 503, Pub. L. 95-87, 91 Stat. 407 (30 U.S.C. 1253))

[FR Doc. 82-14450 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-82-08]

B & T Icebreaker Regatta, Special Local Regulation

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard will establish a regulated area in the Niagara River, on June 5 and 6, 1982. This action is required to permit the conducting of an approved marine event. It is intended to restrict vessel navigation in the Niagara River area for the safety of the spectators and participants in the event.

EFFECTIVE DATE: This amendment becomes effective on June 5, 1982.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: This rule is effective in less than 30 days after publishing. On 29 April, 1982, the Coast Guard published a notice of proposed rulemaking in the *Federal Register* for these regulations (47 FR 18371). Interested persons were requested to submit comments and no comments were received.

Drafting Information: The principal persons involved in drafting this rule are MSTC Bruce Graham, Project Officer, Office of Search and Rescue, and LCDR Michael Gentile, Project Attorney, Legal Office, Ninth Coast Guard District.

Discussion of Comments: None was received and no significant differences

exist between the proposed and final rule.

Summary of Final Evaluation: The B & T Icebreaker Regatta will be conducted on the Niagara River, Tonawanda Channel, on June 5 and 6, 1982. This event will have an estimated 50 hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Buffalo, NY).

These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the regulated area in the Tonawanda Channel of the Niagara River can be opened periodically to allow for the passage of commercial vessels. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to insure the protection of life and property in the area during the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Final Regulations: In consideration of the foregoing, Part 100 of Title 33 Code of Federal Regulations, is amended by adding the following section:

§ 100.35-0908 Niagara River, New York/Tonawanda Channel.

(a) The following area will be restricted to vessel navigation or anchorage from 1200 (local time) until 1900 on June 5 and 6, 1982.

(1) That portion of the east branch of the Niagara River, Tonawanda Channel, from the overhead cable, 1300 yards northeast of the South Grand Island Bridge, to an east-west line through Tonawanda channel Buoy 35 (LLP 29).

(b) The patrol of a portion of Niagara River will be under the direction of a designated Coast Guard Patrol Commander who is empowered to forbid and control movement of vessels in the area before, during, and after the

events for such time as he finds it necessary for the safe and orderly conduct of the events.

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) This section 100.35-0908 will become effective at 1200 (local time) on June 5, 1982 and will no longer be effective after 1900 on June 6, 1982.

(Sec. 1, 35 Stat. 69 as amended, Sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. 454; 49 U.S.C. 1655(b)(1); 33 CFR 100.35; 49 CFR 1.46(b))

Dated: May 11, 1982.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

(FR Doc. 82-14495 Filed 5-26-82; 8:45 am)

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD05-81-16R]

Northwest Harbor, Baltimore, Md.; Anchorage Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard was petitioned by Andrews, Miller and Associates, Inc., on behalf of Gaylord Brooks Investment Company, to amend the anchorage regulations for the small boat anchorage ground located generally east of Fells Point and the Northwest Harbor Turning Basin. The basis for the petition was to allow for construction of a 225-slip marina at Fells Point. Three of the proposed piers at this marina would have bordered on the present anchorage ground boundary. Vessels desiring to use these piers would have had to maneuver through the anchorage ground, thereby interfering with its intended purpose to separate anchored and navigating vessels in order to enhance the safety of both classes. This amendment moves the northwest boundary of the small boat anchorage approximately 50 yards to the southeast. This amendment will enhance navigation safety by separating navigating vessels from those at anchor within the anchorage ground.

EFFECTIVE DATE: This amendment is effective on June 28, 1982.

FOR FURTHER INFORMATION CONTACT: Captain E. E. MORAN, Chief, Port Safety Branch, Fifth Coast Guard

District, 431 Crawford Street, Portsmouth, Virginia (23705), (804) 398-6389.

SUPPLEMENTARY INFORMATION: On August 25, 1981, the U.S. Army Corps of Engineers, Baltimore District issued a public notice (NABOP-FW81-0222-2) concerning an application by Gaylord Brooks Investment Company for a permit to construct a 225-slip marina east of Fells Point in the Northwest Harbor, Baltimore, Maryland. On September 16, 1981 the Coast Guard objected to this proposed construction. The basis for this objection was that vessels desiring to use the three easternmost piers would, by necessity, be required to maneuver through the anchorage ground to reach these piers. Pursuant to the Coast Guard's request, the U.S. Army Corps of Engineers has acted to place the permit application in an inactive status until the Coast Guard's objection is resolved. Adoption of this final rule resolves the Coast Guard's objection to this proposed construction. On November 11, 1981, Andrews, Miller, and Associates, Inc., on behalf of Gaylord Brooks Investment Company, submitted a petition to the Coast Guard to amend the northwest boundary of the small craft anchorage to accommodate the proposed construction. The Coast Guard acted upon this petition and published a notice of proposed rulemaking in the Federal Register on February 16, 1982 (47 FR 6660). This notice proposed the amendments adopted by this final rule. Interested persons were invited to participate in this rulemaking by submitting written views, arguments, or data.

Discussion of Comments: One comment was received supporting the increased navigation safety that would result from the adoption of this rule. While the opportunity for a public hearing was announced, none was held because of the lack of public interest.

Discussion of the Rule: This amendment adjusts the northwesternmost boundary of the small craft anchorage to accommodate the construction of the proposed marina. The northwesternmost boundary has been realigned so as to be located approximately 50 yards southeast of the marina piers when they are constructed. An environmental assessment completed on this rulemaking resulted in a finding of no significant impact.

Drafting Information: The principal persons involved in drafting this notice are Lieutenant Junior Grade M. S. KUSHLA, Project Manager, Port Safety Branch, Fifth Coast Guard District, and Lieutenant D. M. WRYE of the office of

the District Legal Officer, Fifth Coast Guard District.

Regulatory Evaluation: This regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this regulation is considered to be non-significant in accordance with guidelines set out in the Policies and Procedures for Simplification Analysis and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The economic impact of this rule on small business, non-profit organizations, and government entities is considered to be minimal because the rule results in only a small boundary revision to the small craft anchorage ground that will eliminate user conflicts within its boundaries. The change to this anchorage ground is not a matter on which there has been substantial public interest or controversy, nor does it involve impacts on competitive business, state or local government, or the regulations of other programs or agencies. In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—ANCHORAGE REGULATIONS

Final regulations: In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended by revising § 110.158(a)(9) to read as follows:

§ 110.158 Baltimore Harbor, MD.

(a) The anchorage grounds * * *

(9) Small vessel anchorage—In the Northwest Harbor, north of the Turning Basin, beginning at latitude 39°16'49.5" N., longitude 76°35'06" W.; thence southeast to latitude 39°16'43" N., longitude 76°34'53.5" W.; thence southwest to latitude 39°16'36.5" N.; longitude 76°34'59" W.; thence northwest to latitude 39°16'43" N., longitude 76°35'11" W.; thence northeast to the point of beginning. This anchorage shall be only by vessels 100 feet in length or less.

(Sec. 7, 38 Stat. 1053, (33 U.S.C. 471); Sec. 6(g)(1), 80 Stat. 940; (49 U.S.C. 1655(g)(1), 49 CFR 1.46(c) and 1.45(b)), 33 CFR 1.05-1(g))

Dated: May 6, 1982.

T. J. Wojnar,

Captain U.S. Coast Guard, Acting
Commander, Fifth Coast Guard District.

[FR Doc. 82-14494 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2114-6]

California State Implementation Plan Revision

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: Revisions to rules of the Butte County, El Dorado County, Imperial County, Monterey Bay Unified, Shasta County, and Tuolumne County Air Pollution Control Districts (APCDs) were forwarded to EPA by the State of California. These revisions generally are administrative and retain equivalent emission control requirements. EPA reviewed these rules with respect to the Clean Air Act and determined that they should be approved.

EFFECTIVE DATE: July 26, 1982.

ADDRESSES: Copies of the revisions are available for public inspection during normal business hours at the following locations:

Public Information Reference Unit,
Environmental Protection Agency,
Library, 401 "M" Street, SW., Room
2404, Washington, D.C. 20460
Office of the Federal Register, 1100 "L"
Street, NW., Room 8401, Washington,
D.C. 20408
California Air Resources Board, 1102
"Q" Street, Sacramento, CA 95812
Butte County Air Pollution Control
District, 316 Nelson Avenue, Oroville,
CA 95965
El Dorado County Air Pollution Control
District, 330 Fair Lane, Placerville, CA
95667
Imperial County Air Pollution Control
District, 940 West Main Street, El
Centro, CA 92243
Monterey Bay Unified Air Pollution
Control District, 1270 Natividad Road,
Salinas, CA 93906
Shasta County Air Pollution Control
District, 1855 Placer Street, Redding,
CA 96001
Tuolumne County Air Pollution Control
District, 9 North Washington Street,
Sonora, CA 95370

FOR FURTHER INFORMATION CONTACT:

Douglas Grano, Chief, State
Implementation Plan Section, Air

Management Division, Environmental
Protection Agency, 215 Fremont Street,
San Francisco, CA 94105, (415) 974-8058.

SUPPLEMENTARY INFORMATION: The
State of California submitted the
following rules and regulations on the
indicated dates:

Butte County

February 25, 1980

Rule 4.5A Standards for Granting
Applications

4.5B Conditional Approval

July 10, 1980

Rule 4.9 Action on Applications

El Dorado County

May 23, 1979

Rule 306 Exceptions to Rule 305 (Lake
Tahoe Air Basin)

April 17, 1980

Regulation V Permit to Operate
Regulations (Mountain Counties Air
Basin)

Rule 502 Exemptions to Rule 501

503 Applications

504 Action on Applications

505 Conditional Approval

506 Denial of Application

507 Responsibility

508 Posting of Permit to Operate

509 Authority to Inspect

510 Separation of Emissions

511 Combination of Emissions

512 Circumvention

513 Source Recordkeeping

514 Public Records and Trade
Secrets

515 Provision of Sampling and
Testing Facilities

516 Upset and Breakdown
Conditions

517 Transfer

518 Revocation of a Permit to
Operate

519 Appeals

520 Reinstatement

August 15, 1980

Regulation VI Fees (Mountain
Counties and Lake Tahoe Air
Basins)

Rule 601 Filing Fees

602 Analysis Fees

603 Permit Fee Penalty

604 Permit Granted by Hearing
Board

605 Cancellation or Denial

606 Alteration of Equipment

607 Revising Permit Conditions

608 Annual Renewal Fee

609 Any Article, Machine,
Equipment or Other Contrivance

610 Multiple Location

611 Duplicate Permit

612 Technical Reports

613 Hearing Board Fees

October 23, 1981

Regulation III Open Burning (Mountain
Counties Air Basin)

Rule 301 Prohibition from Burning

302 Exceptions to Rule 301

303 Agricultural Burning

304 Range Improvement Burning

305 Forest Management Burning

306 Land Development Clearing

307 Ditch and Road Maintenance

308 Hazard Reduction

309 Fire Suppression and Training

310 Residential Maintenance

311 Recreational Activity

312 Required Permit

313 No Burn Day

314 Burning Permits

315 Minimum Drying Times

316 Burning Management

317 Mechanized Burners

318 Enforcement Responsibilities

319 Penalty

501 Permit Required

703 Contents of Petitions

710 Notice of Public Hearing

Imperial County

October 23, 1981

Rule 101 Definitions

301 Permit Fees

302 Fee Schedules

305 Hearing Board Fees

306 Agricultural Burning Permit Fees

307 Livestock Feed Yard Fees

Monterey Bay Unified

February 25, 1980

Rule 416 Organic Solvents

October 23, 1981

Rule 301 Permit Fee Schedules

601 Filing Petitions

602 Contents of Petitions

Shasta County

October 15, 1979

Rule 2:5 Exemptions

September 5, 1980

Rule 2:6 Open Burning: General
Provisions

October 23, 1981

Rule 2:11 Fees (amendments)

Tuolumne County

October 23, 1981

Regulation II Prohibitions

Rule 203 Exceptions

Regulation III Open Burning

Rule 301 Prohibition from Burning

302 Exceptions to Rule 301

303 Agricultural Burning

304 Range Improvement Burning

305 Forest Management Burning

- 306 Land Development Clearing
- 307 Ditch and Road Maintenance
- 308 Hazard Reduction
- 309 Fire Suppression and Training
- 310 Residential Maintenance
- 311 Recreational Activity
- 312 Required Permit
- 313 No Burn Day
- 314 Burning Permits
- 315 Minimum Drying Times
- 316 Burning Management
- 317 Mechanized Burners
- 318 Enforcement Responsibilities
- 319 Penalty

Regulation V Permit to Operate Regulations

Rule 501 Permit Required

- 502 Exemptions to Rule 501
- 503 Applications
- 504 Action on Applications
- 505 Conditional Approval
- 506 Denial of Application
- 507 Responsibility
- 508 Posting of Permit to Operate
- 509 Authority to Inspect
- 510 Separation of Emissions
- 511 Combination of Emissions
- 512 Circumvention
- 513 Source Recordkeeping
- 514 Public Records and Trade Secrets
- 515 Provision of Sampling and Testing Facilities
- 516 Upset and Breakdown Conditions
- 517 Transfer
- 518 Revocation of a Permit to Operate
- 519 Appeals
- 520 Reinstatement
- 521 Annual Renewal

Regulation VII Procedure Before the Hearing Board

Rule 703 Contents of Petitions

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as State Implementation Plan (SIP) revisions. All the rules listed above have been evaluated and found in accordance with EPA policy and 40 CFR Part 51. Detailed evaluation reports are available for public inspection at the EPA Library in Washington, D.C. and the EPA Region 9 Office.

This notice approves all the rule revisions listed above and incorporates them into the California SIP. EPA's approval of the above revisions to the California SIP is being done without prior proposal because the revisions are not controversial. The public is advised that this approval action will be effective July 26, 1982. However, if notice is received by EPA within 30 days that someone wishes to submit adverse

or critical comments, the approval action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed 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 the Clean Air Act, any 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 today). 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 California 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.

(Secs. 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a))

Dated: May 19, 1982.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(51)(xiv)(B), (52)(xviii)(B), (54)(ii)(B) and (viii)(B), (70)(iv), (86)(ii), (87)(viii), (103)(xiii)–(xvii), and (119) to read as follows:

§ 52.220 Identification of plan.

- (c) * * *
- (51) * * *
- (xiv) * * *
- (B) Amended Rule 306.
- (52) * * *
- (xviii) * * *
- (B) Amended Rule 2:5.
- (54) * * *
- (ii) * * *
- (B) Amended Rule 416.
- (viii) * * *
- (B) Amended Rules 4.5A and 4.5B.

(70) * * *

(iv) El Dorado County APCD (Mountain Counties and Lake Tahoe Air Basin).

(A) New or amended Rules 601–613.

(86) * * *

(ii) Butte County APCD.

(A) Amended Rule 4.9.

(87) * * *

(viii) Shasta County APCD.

(A) New Rule 2:6.

(103) * * *

(xiii) El Dorado County APCD (Mountain Counties Air Basin).

(A) New or amended Rules 301–319, 501, 703, and 710.

(xiv) Imperial County APCD.

(A) New or amended Rules 101, 301, 302, 305–307.

(xv) Shasta County APCD.

(A) Amended Rule 2:11.

(xvi) Monterey Bay Unified APCD.

(A) Amended Rules 301, 601, and 602.

(xvii) Tuolumne County APCD.

(A) New or amended Rules 203, 301–319, 501–521, 703, and 710.

(119) Revised regulations for the following APCDs submitted on April 17, 1980, by the Governor's designee.

(i) El Dorado County APCD (Mountain Counties Air Basin).

(A) New or amended Rules 502–520.

[FR Doc. 82-14455 Filed 5-26-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-2111-8]

Approval and Promulgation of Implementation Plans

Tennessee; Approval of 1979 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, pursuant to the requirements of Part D of Title I of the Clean Air Act (CAA) of 1977, for the Kingsport secondary particulate nonattainment area and the Copperhill secondary sulfur dioxide (SO₂) nonattainment area. EPA is also announcing the removal of the conditions on the approval given earlier to the Part D plans for the Kingsport and

Nashville primary particulate nonattainment areas.

DATE: These actions will be effective June 28, 1982.

ADDRESSES: 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, S.W., Washington, D.C.
20460;

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

Division of Air Pollution Control,
Tennessee Department of Public
Health, 150 9th Avenue North,
Nashville, Tennessee 37203;

Air Pollution Section, Metropolitan
Health Department 1600 Hayes Street,
Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT:
Raymond S. Gregory of EPA Region IV's
Air Programs Branch, 345 Courtland
Street, N.E., Atlanta, Georgia 30365,
telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: In the
March 3, 1978, *Federal Register* (43 FR
8962 at 9035), the September 11, 1978
Federal Register (43 FR 40412 at 40432),
and the August 27, 1979 *Federal Register*
(44 FR 50098), a number of areas within
the State of Tennessee were designated
as not attaining certain National
Ambient Air Quality Standards
(NAAQS).

Portions of Nashville and Kingsport
were designated as nonattainment for
the primary and secondary NAAQS for
particulate matter. Implementation plan
revisions for attainment of the primary
particulate matter NAAQS were
conditionally approved for Nashville on
August 13, 1980 (45 FR 53809 at 53818),
and for Kingsport on November 17, 1980
(45 FR 75660 at 75661).

Nashville Particulate

The conditional approval for the
Nashville plan required the submittal by
October 1, 1980, of a detailed listing of
measures to be investigated concerning
nontraditional source control. The
required listing was submitted on
September 30, 1980, and it meets the
requirement of the conditional approval.

Kingsport Primary Particulate

The conditional approval for
Kingsport required two actions, the first
of which was the submittal of plans for
the control of nontraditional sources and
the showing that resultant controls
would be sufficient to meet the
requirement of Reasonable Further

Progress (RFP). The State submittal of
December 17, 1980, satisfies the
requirement for the control of
nontraditional sources. The reductions
in particulate emissions from these
control measures for fugitive dust were
quantified in the control strategy
demonstration. The plan for attainment
of the secondary NAAQS submitted by
the State on May 8, 1980, provided a
showing of RFP sufficient to fulfill the
requirement of this part of the
conditional approval.

The second requirement was that
permits be submitted without expiration
dates for sources, or certification by the
State that the same permits will be
renewed and resubmitted to EPA before
expiration with conditions at least as
stringent. The December 17, 1980,
submittal contained a number of the
required permits without expiration
dates and a resolution adopted by the
Air Pollution Control Board of the State
of Tennessee on December 11, 1980,
stating that "The Tennessee Air
Pollution Control Board hereby agrees
that prior to expiration of the previously
issued permits for particulate emission
sources in the Kingsport nonattainment
area implementation plan, the Board
shall issue permits without expiration
dates with conditions at least as
stringent as those on the permits now in
effect." In keeping with this resolution,
on August 27, 1981, additional permits
without expiration dates were
submitted. The submittals described
above meet the requirements of the
conditional approval given to the Part D
revisions for the Kingsport primary
particulate nonattainment area.

Kingsport Secondary particulate

The secondary plan for Kingsport
consists of operating permits containing
permit conditions representing emission
levels that are achieved by reasonably
available control technology (RACT)
and RACT measures to control fugitive
dust emissions. The permit conditions
involve particulate matter and visible
emission standards, and reasonable
limitations on operating hours and
capacities. Plans submitted by
individual sources were tailored to
provide the necessary control of fugitive
dust at those sources.

A public hearing concerning the
secondary plan was held on April 16,
1980, with adoption of the plan by the
Tennessee Air Pollution Control Board
on May 1, 1980.

Copperhill Secondary Sulfur Dioxide

After public hearing on July 16, 1980,
and adoption by the Tennessee Air
Pollution Control Board on August 5,
1980, Tennessee on August 15, 1980,

submitted a plan for attainment of the
secondary SO₂ NAAQS in Copperhill.

This plan contained emission limits
which are more restrictive than the
original RACT limits set in the primary
plan. The secondary plan with these
revised RACT limits demonstrates
attainment of the secondary SO₂
NAAQS.

In addition, limits on sulfur content
were specified for non-process fuel
burning equipment. For #1 or #2 fuel oil
the sulfur weight content is not to
exceed 0.50 percent. For #4, #5, or #6
fuel oil the sulfur weight content is not
to exceed 1.25 percent.

Action. Based on the foregoing, EPA
hereby removes the conditions on the
approvals given to both the Nashville
and Kingsport Part D plans for
particulate nonattainment areas. The
required submittals have been received
and are considered sufficient to meet the
requirements specified in the notices of
conditional approval. EPA also
approves the plans for attainment of the
secondary NAAQS for particulates in
Kingsport and SO₂ in Copperhill. The
secondary plans have been reviewed
and meet the requirements for the plans
to be submitted under Part D of Title I of
the CAA. This action is effective June
28, 1982.

The announcement of proposed
approval for these revisions was
published on January 5, 1982 (47 FR 191).
In that notice of proposed rule making, a
30-day public comment was announced.
No public comments were received in
response to that announcement.

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 today]. This
action may not be challenged later in
proceedings to enforce its requirements
(See 307(b)(2).)

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

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

List of Subjects in 40 CFR Part 52

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

Dated: May 20, 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

1. In § 52.2220, paragraph (c) is amended by adding subparagraph (45) as follows:

§ 52.2220 Identification of plan.

* * * * *

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

* * * * *

(45) (i) Materials developed to meet conditions on the approval of the 1979 revisions for the Nashville and Kingsport primary TSP nonattainment areas, submitted on September 30, 1980, and December 17, 1980, respectively, by the Tennessee Department of Public Health. Additional materials for Kingsport were submitted on August 27, 1981.

(ii) 1979 revisions for the Copperhill secondary SO₂ nonattainment area, submitted on August 15, 1980, by the Tennessee Department of Public Health.

(iii) 1979 revisions for the Kingsport secondary TSP nonattainment area, submitted on May 8, 1980, by the Tennessee Department of Public Health.

§ 52.2231 [Amended]

2. In § 52.2231, paragraphs (a) and (b), concerning conditional approval of the 1979 revisions for the Nashville and Kingsport primary TSP nonattainment areas, are removed.

[FR Doc. 82-14424 Filed 5-26-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A-4-FRL-2115-1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Georgia: Plan for Control of Sulfuric Acid Mist Negative Declaration for Phosphate Fluorides

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to section 111(d) of the Clean Air Act and EPA's implementing guidelines, the Georgia Environmental Protection Division (GEPD) has adopted and submitted a

plan for the control of sulfuric acid mist. EPA today approves this plan, as well as the State's certification that there are no phosphate fertilizer plants in Georgia subject to section 111(d).

EFFECTIVE DATE: This action will be effective on July 26, 1982 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

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

Georgia Department of Natural
Resources, Environmental Protection
Division, 270 Washington Street, S.W.,
Atlanta, Georgia 30334

FOR FURTHER INFORMATION CONTACT:
Mr. Barry Gilbert, EPA Region IV, Air
Programs Branch, at the above listed
address and phone 404/881-3286 or FTS
257-3286.

SUPPLEMENTARY INFORMATION: In accordance with section 111 of the Clean Air Act (amended August 1977, Pub. L. 95-95), "Standards of Performance for New Stationary Sources," EPA has promulgated standards of performance for criteria pollutants (those for which National Ambient Air Quality Standards have been published) and non-criteria pollutants. These standards apply to "new" sources (i.e., new, modified, or reconstructed sources) which commenced construction after the date on which EPA proposed standards for that particular source category.

Paragraph (d) of section 111 requires States to develop plans for the control of emissions of the same non-criteria, or designated, pollutants from existing sources, which are regulated from the new source category. "Existing" sources were defined as those which are present prior to the date on which EPA proposed new source performance standards for that particular source category. The requirements for such plans are set forth in Subpart B of 40 CFR Part 60 (November 17, 1975; 40 FR 53346).

On January 31, 1978, Georgia submitted to EPA a plan for controlling sulfuric acid mist from existing sulfuric acid producers pursuant to Section 111(d) of the Clean Air Act. Sulfuric acid mist limitations were adopted by the board of Natural Resources in 1972 as part of the original State Implementation Plan approved by EPA on May 31, 1972. The established acid mist emission limitation (391-3-1-02(2) (J.) Sulfuric Acid Plants) for sulfuric acid producers

(0.15 pounds per ton) is consistent with and more stringent than the recommended emission limitation in EPA's final guideline document (0.5 pounds per ton). The two sulfuric acid producers in the State of Georgia are reported to be in compliance with the applicable emission standards. EPA has evaluated the Georgia plan by comparing it with the requirements for the State plans for designated facilities, as set forth in Subpart B of 40 CFR Part 60, "Adoption and Submittal of State Plans for Designated Facilities," and with the EPA guideline document, *Control of Sulfuric Acid Mist Emissions from Existing Production Units* (EPA-450/2-77-019). The Georgia plan controls acid mist emissions from sulfuric acid producers that were in operation or were under construction before January 1, 1972. EPA approves the Georgia plan since it completely satisfies EPA requirements.

Action: EPA is today approving the Georgia plan for the control of sulfuric acid mist from existing sulfuric acid plants, and the State's certification, submitted on July 14, 1977, that there are no phosphate fertilizer plants in Georgia subject to Section 111(d) requirements. This is being done without prior proposal because the changes are noncontroversial and have limited impact and no comments are anticipated as all affected sources are reported to be in compliance with the applicable state regulation.

The public should be advised that this action will be effective July 26, 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 another 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 EPA's approval of this revision is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before July 26, 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.

Pursuant to the provisions of 5 U.S.C. 605(b) I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action applies to only two

sources that are reported in compliance with the plan's emission limit.

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

(Sections 111 and 301(a) of the Clean Air Act, as amended, (42 USC 7411 and 7601(a)))

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 20, 1982.

Anne M. Gorsuch,
Administrator.

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart L, consisting of §§ 62.2600 and 62.2610, is added as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Subpart L—Georgia

Fluoride Emissions from Phosphate Fertilizer Plants

Sec.
62.2600 Identification of plan—Negative declaration.

Sulfuric Acid Mist from Existing Sulfuric Acid Plants

62.2610 Identification of plan.

Subpart L—Georgia

Fluoride Emissions from Phosphate Fertilizer Plants

§ 62.2600 Identification of plan—Negative declaration.

The Georgia Environmental protection Division submitted on July 14, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the State subject to Part 60, Subpart B, of this Chapter.

Sulfuric Acid Mist from Existing Sulfuric Acid Plants

§ 62.2610 Identification of plan.

- Title of plan: Untitled.
- The plan was officially submitted on January 31, 1978.
- The plan applies to the following types of sulfuric acid plant:
 - Sulfur-burning plants of American Cyanamid Company in Savannah and Cities Service Company in Augusta.
 - Oleum plant of Cities Service Company in Augusta.
 - There are no bound sulfur feedstock plants.

Authority: Section 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411 and 7601(a)).

[FR Doc. 82-14423 Filed 5-26-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-4-FRL-2121-5]

Designation of Areas for Air Quality Planning Purposes; Alabama and Kentucky; Redesignation of Ozone Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 20, 1981 (46 FR 57046), EPA announced that it was granting requests made by Alabama and Kentucky for the redesignation of certain counties from unclassifiable to attainment for ozone. These actions were taken on the basis of measured air quality data, and without prior proposal. EPA subsequently received a request for an opportunity to submit adverse comments on the actions. Accordingly, the Agency withdrew the final action and repropose it on February 16, 1982 (47 FR 6628 and 6661). One comment was received in response. EPA today redesignates the areas as proposed.

DATE: This action is effective on June 28, 1982.

ADDRESSES: Copies of the materials submitted by Alabama and Kentucky may be examined during normal business hours at the following locations:

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

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

FOR FURTHER INFORMATION CONTACT:

Archie Lee of the Region IV Air
Programs Branch at 404/881-3043 (FTS
257-3043).

SUPPLEMENTARY INFORMATION: On July 30, 1981, the Alabama Air Pollution Control Commission submitted one full season of ozone monitoring data collected at Murphy Hill, Alabama, and requested that it be used to redesignate Jackson and DeKalb Counties attainment for this pollutant. On April 28, 1981, the Kentucky Department for Natural Resources and Environmental Protection made a similar submittal and request with respect to eight counties in that State (Allen, Butler, Edmonson,

Grayson, Hart, Logan, Simpson, and Warren). On November 20, 1981 (46 FR 57046), EPA changed the attainment status designation of these ten counties from unclassifiable to attainment without prior proposal of the action. For an explanation of this procedure, the reader may see 46 FR 44477, September 4, 1981.

A more detailed description of the States' submittals and EPA's findings can be found in the November 20, 1981, notice finalizing the redesignations. EPA withdrew that action on February 16, 1981 (46 FR 6628), due to the receipt on December 17, 1981, of a letter from Mr. Leonard Bruckman, State of Connecticut Department of Environmental Protection, objecting to the redesignations. His objection and subsequent comments of January 19, and March 18, 1982, are based primarily on the premise that the Clean Air Act requires redesignations to be based upon at least two years of data. This is incorrect. The Clean Air Act does not specifically deal with the amount of monitoring data needed for redesignations. On December 7, 1979, an Agency policy memorandum on the requirements for ozone redesignations was issued under the signature of Richard Rhoads. The memorandum states that one oxidant season of ambient data may be used to assess attainment if that is the only data available. EPA feels that the data submitted is statistically sufficient to assess attainment.

Mr. Bruckman also questioned EPA's approval of the Kentucky and Alabama air quality surveillance plans, asking why monitors were not required in the counties subject to today's action. EPA's response is that these counties are rural and have no identified major sources. To require monitoring there would have caused an inappropriate use of resources. Accordingly, the areas are redesignated attainment for ozone as requested by the States.

It should be noted that these redesignations do not alter the ozone attainment status tables of 40 CFR Part 81. This is because section 107 of the Clean Air Act does not provide for EPA to make a formal distinction in the Code of Federal Regulations between areas which are attainment for ozone and those which cannot be classified.

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 today]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: May 19, 1982.

Anne M. Gorsuch,
Administrator.

[FR Doc. 82-14422 Filed 5-26-82; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-53

Statement of Organization and Functions

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation reflects the current GSA organization and functions and is published in accordance with the Freedom of Information Act.

EFFECTIVE DATE: May 27, 1982.

FOR FURTHER INFORMATION CONTACT: Sylvester H. Kish, Director, Organization Division, (202-566-1778).

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Part 105-53

Organization and functions
(Government agencies).

Therefore, Part 105-53 is revised to read as follows:

PART 105-53—STATEMENT OF ORGANIZATION AND FUNCTIONS

Sec.
105-53.100 Purpose.

Subpart A—General

- 105-53.110 Creation and authority.
- 105-53.112 General statement of functions.
- 105-53.114 General statement of organization.
- 105-53.116 General regulations.
- 105-53.118 Locations of material available for public inspection.
- 105-53.120 Addresses and telephone numbers.

Subpart B—Central Offices

- 105-53.130 Office of the Administrator.
- 105-53.130-1 Office of Congressional Affairs.
- 105-53.130-2 Office of Ethics.
- 105-53.130-3 Office of the Executive Secretariat.
- 105-53.130-4 Office of Small and Disadvantaged Business Utilization.
- 105-53.131 Office of Inspector General.
- 105-53.132 GSA Board of Contract Appeals.

- 105-53.133 Information Security Oversight Office.
- 105-53.134 Associate Administrator for Administration.
- 105-53.135 Office of Operations.
- 105-53.136 Office of Policy and Management Systems.
- 105-53.137 Office of Acquisition Policy.
- 105-53.138 Office of General Counsel.
- 105-53.139 Office of Plans, Programs, and Financial Management.
- 105-53.140 Office of Organization and Personnel.
- 105-53.141 Office of Oversight.
- 105-53.142 Office of Public Affairs.
- 105-53.143 Automated Data and Telecommunications Service.
- 105-53.144 Federal Property Resources Service.
- 105-53.145 Federal Supply Service.
- 105-53.146 National Archives and Records Service.
- 105-53.147 Public Buildings Service.
- 105-53.148 Transportation and Public Utilities Service.

Subpart C—Regional Offices

- 105-53.150 Organization and functions.
 - 105-53.151 Geographic composition; addresses and telephone numbers.
- Authority: 5 U.S.C. 552(a)(1), Pub. L. 90-23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486(c), Pub. L. 81-152, 63 Stat. 390, sec. 205(c).

§ 105-53.100 Purpose.

This part is published in accordance with 5 U.S.C. 552 and is a general description of the General Services Administration.

Subpart A—General

§ 105-53.110 Creation and authority.

The General Services Administration was established by section 101 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), effective July 1, 1949. The act consolidated and transferred to the agency a variety of real and personal property and related functions formerly assigned to various agencies. Subsequent laws and Executive orders assigned other related functions and programs.

§ 105-53.112 General statement of functions.

The General Services Administration, as a major policy maker, provides guidance and direction to Federal agencies in a number of management fields. GSA formulates and prescribes a variety of Government-wide policies relating to procurement and contracting; real and personal property management; transportation, public utilities, and telecommunications management; automated data processing management; records management; the Nation's emergency defense supplies; the use and disposal of surplus property and equipment; the information security

program; and the creation, preservation, and disposal of records.

§ 105-53.114 General statement of organization.

The General Services Administration is an independent agency in the executive branch of the Government. The work of the agency as a whole is directed by the Administrator of General Services, who is assisted by the Deputy Administrator. A summary description of each of GSA's major functions and organizational components is presented in Subparts B and C.

§ 105-53.116 General regulations.

Regulations of the General Services Administration and its components are codified in the Code of Federal Regulations in Title 1, Chapters I and II; Title 32, Chapter XX; and Title 41, Chapters 1, 5, 5A, 5B, 101, and 105. Titles 1, 32, and 41 of the Code of Federal Regulations are available for review at most legal and depository libraries and at the General Services Administration Central Office and regional offices. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 105-53.118 Locations of material available for public inspection.

GSA maintains reading rooms containing material available for public inspection and copying at the following locations:

(a) General Services Administration, 18th & F Streets, NW., Library (Room 1033), Washington, DC, 20405. Telephone: 202-566-1240.

(b) Business Service Center, General Services Administration, John W. McCormack Building, Post Office & Courthouse, Boston, MA 02109. Telephone: 617-223-2868.

(c) Business Service Center, General Services Administration, 26 Federal Plaza, NY, NY 10007. Telephone: 212-264-1234.

(d) Business Service Center, General Services Administration, Seventh & D Streets, SW., Rm. 1050, Washington, DC 20407. Telephone: 202-472-1804.

(e) Business Service Center, General Services Administration, Ninth & Market Streets., Rm. 5142, Philadelphia, PA 19107. Telephone: 215-597-9613.

(f) Business Service Center, General Services Administration, Richard B. Russell Federal Building, U.S. Courthouse, 75 Spring Street SW., Atlanta, GA 30303. Telephone: 404-221-5100.

(g) Business Service Center, General Services Administration, 230 South

Dearborn Street, Chicago, IL 60604.
Telephone: 312-353-5383.

(h) Business Service Center, General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131. Telephone: 816-926-7203.

(i) Business Service Center, General Services Administration, 819 Taylor Street, Fort Worth, TX 76102. Telephone: 817-334-3284.

(j) Business Service Center, General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225. Telephone: 303-324-2216.

(k) Business Service Center, General Services Administration, 525 Market Street, San Francisco, CA 94105. Telephone: 415-556-0877.

(l) Business Service Center, General Services Administration, 440 Federal Building, 915 Second Avenue, Seattle, WA 98174. Telephone: 206-442-5556.

§ 105-53.120 Addresses and telephone numbers.

The Office of the Administrator; Office of Inspector General; GSA Board of Contract Appeals; Information Security Oversight Office; Associate Administrator for Administration; Office of Operations; Office of Policy and Management Systems; Office of Congressional Affairs; Office of Ethics; Office of the Executive Secretariat; Office of Small and Disadvantaged Business Utilization; Office of Acquisition Policy; Office of Organization and Personnel; Office of Plans, Programs, and Financial Management; Office of Oversight; Office of Public Affairs; Automated Data and Telecommunications Service; Federal Property Resources Service; and Public Buildings Service are located 18th and F Streets, NW., Washington, DC 20405. The Federal Supply Service is located in Crystal Mall Building 4, 1941 Jefferson Davis Highway, Washington, DC 20406. The National Archives and Records Service is located in the Archives Building, Seventh and Pennsylvania Avenue, NW., Washington, DC 20408. The Transportation and Public Utilities Service is located in the Chester Arthur Building, 425 I Street, NW., Washington, DC 20406. The telephone number for the above addresses is 202-655-4000. The addresses of the eleven regional offices are provided in § 105-53.151.

Subpart B—Central Office

§ 105-53.130 Office of the Administrator.

The Administrator of General Services, appointed by the President with the advice and consent of the Senate, directs the execution of all programs assigned to the General Services Administration. The Deputy

Administrator, who is appointed by the Administrator, assists in directing agency programs and coordinating activities related to the functions of the General Services Administration.

§ 105-53.130-1 Office of Congressional Affairs.

The Office of Congressional Affairs, headed by the Director of Congressional Affairs, is responsible for directing and coordinating the legislative and congressional activities of GSA.

§ 105-53.130-2 Office of Ethics.

The Office of Ethics, headed by the Director of Ethics, is responsible for developing, directing, and monitoring the agency's program governing employee standards of ethical conduct. It is the focal point for the agency's implementation of the Ethics in Government Act of 1978.

§ 105-53.130-3 Office of the Executive Secretariat.

The Office of the Executive Secretariat, headed by the Director of the Executive Secretariat, is responsible for policy coordination, correspondence control, and various administrative tasks in support of the Administrator and Deputy Administrator.

§ 105-53.130-4 Office of Small and Disadvantaged Business Utilization.

(a) *Creation and authority.* Public Law 95-507, known as the Small and Disadvantaged Business Utilization Act of 1978, established in each Federal agency having procurement authority the Office of Small and Disadvantaged Business Utilization. Each office is headed by a Director of Small and Disadvantaged Business Utilization. The Director is appointed by the head of the agency or department.

(b) *Functions.* The Office of Small and Disadvantaged Business Utilization is responsible for issuance of policy direction and guidance relating to Sections 8 and 15 of the Small Business Act. The office provides information, assistance, and counseling to business concerns, including small businesses, small and economically disadvantaged persons, women-owned businesses, labor surplus area concerns, and workshops operated by the blind and other severely handicapped persons. The office also conducts outreach, liaison, source listings, and seminars for small and disadvantaged businesses and coordinates and promotes procurement programs and policies.

§ 105-53.131 Office of Inspector General.

(a) *Creation and authority.* Pub. L. 95-452, known as the Inspector General Act of 1978, consolidated existing audit and

investigation functions and established an Office of Inspector General in 11 major domestic departments and agencies, including GSA. Each office is headed by a presidentially appointed Inspector General.

(b) *Functions.* The Office of Inspector General is responsible for policy direction and conduct of audit, inspection, and investigation activities relating to programs and operations of GSA; and maintaining liaison with other law enforcement agencies, the Department of Justice, and United States Attorneys on all matters relating to the detection and prevention of fraud and abuse. The Inspector General reports semi-annually to the Congress through the administrator concerning fraud, abuses, other serious problems and deficiencies of agency programs and operations; recommends corrective action; and reports on progress made in implementing these actions.

§ 105-53.132 GSA Board of Contract Appeals.

(a) *Creation and authority.* The GSA Board of Contract Appeals (GSBCA), headed by the Chairman, GSA Board of Contract Appeals, was established on February 28, 1979, by the Administrator of General Services as an independent administrative/judicial tribunal under the provisions of the Contract Disputes Act of 1978 (Pub. L. 95-563).

(b) *Functions.* The GSBCA has the responsibility of hearing and deciding disputes on Government contracts awarded by GSA and other governmental agencies and commissions. The Board, acting upon delegated authority from the Administrator and not in its capacity as a board of contract appeals, also handles suspension and debarment actions, appeals stemming from charges of violations of the Ethics in Government Act, and any other disputes not inconsistent with the Boards functions when it sits as a contract appeals board.

(c) *Regulations.* Regulations pertaining to GSBCA programs are published in 41 CFR Part 5A-60. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.133 Information Security Oversight Office.

(a) *Creation and authority.* The Information Security Oversight Office (ISOO) was established by the Administrator on November 20, 1978, under the provisions of Executive Order 12065. Effective August 1, 1982, this authority will be based upon Executive

Order 12356, which supersedes E.O. 12065.

(b) *Functions.* ISOO oversees and ensures, under the general policy direction of the National Security Council, Government-wide implementation of the information security program established by Executive Order.

(c) *Regulations.* Regulations pertaining to ISOO programs are published in 32 CFR Chapter XX, Part 2000 et seq.

§ 105-53.134 Associate Administrator for Administration.

The Associate Administrator for Administration participates in the executive leadership of the agency, provides advice on major policies and procedures to the Administrator and Deputy Administrator, and oversees organizational effectiveness within the agency.

§ 105-53.135 Office of Operations.

The Office of Operations, headed by the Associate Administrator for Operations, participates in the executive leadership of the agency; in the formulation of GSA-wide policy; has primary responsibility for GSA's field operations; supervises GSA's Regional Administrators; and ensures that regional programs are executed in the most cost-effective and efficient manner.

§ 105-53.136 Office of Policy and Management Systems.

The Office of Policy and Management Systems, headed by the Associate Administrator for Policy and Management Systems, participates in the executive leadership of the agency; in the formulation of GSA-wide policy; and serves as the focal point for policy regarding agency management matters, and exercises control of agencywide management systems with oversight responsibility of general operating systems.

§ 105-53.137 Office of Acquisition Policy.

(a) *Functions.* The Office of Acquisition Policy (OAP), headed by the Assistant Administrator for Acquisition Policy, serves as the single focal point for GSA acquisition and contracting matters and is responsible for ensuring that the GSA procurement process is executed in compliance with all appropriate public laws and regulations and based on sound business judgment.

(b) *Regulations.* Regulations pertaining to OAP programs are published in 41 CFR Chapters 5, 5A, and 5B, General Services Administration Procurement Regulations (GSPR), and 41 CFR Chapter 1, Federal Procurement Regulations (FPR). Information on

availability of the regulations is provided in § 105-53.116.

§ 105-53.138 Office of General Counsel.

Functions. The Office of General Counsel (OGC), headed by the General Counsel, provides all legal counsel within GSA with the exception of certain legal activities of the Office of Inspector General and legal activities of the Board of Contract Appeals; drafts legislation proposed by GSA; furnishes legal advice required in connection with reports on legislation proposed by other agencies; provides liaison on legal matters with other Federal agencies; coordinates with the Department of Justice in litigation matters; and reviews contract actions.

§ 105-53.139 Office of Plans, Programs, and Financial Management.

(a) *Functions.* The Office of Plans, Programs, and Financial Management (PPFM), headed by the Assistant Administrator for Plans, Programs, and Financial Management, is responsible for centralized agencywide budget and accounting functions; internal allocation and administrative control of resources; and overall agency programs for financial management and internal automatic data processing.

(b) *Regulations.* Regulations pertaining to PPFM programs are published in 41 CFR Chapter 101, Subchapter A. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.140 Office of Organization and Personnel.

The Office of Organization and Personnel, headed by the Director of Organization and Personnel, plans for and administers GSA-wide programs for staffing, position classification and pay administration, employee relations, training, career development, equal employment opportunity, organization, and staff utilization.

§ 105-53.141 Office of Oversight.

The Office of Oversight, headed by the Director of Oversight, is responsible for conducting independent reviews of agencywide programs within priorities set by the Administrator to determine the effectiveness, efficiency, and economy of GSA activities; oversees agencywide implementation of OMB Circular A-123; serves as the central point of control for audit and inspection reports from the Inspector General and the Comptroller General of the United States; administers GSA's security programs; and directs an agencywide program of administrative services.

§ 105-53.142 Office of Public Affairs.

The Office of Public Affairs, headed by the Director of Public Affairs, is responsible for the planning, implementation, and coordination of all GSA public information and public affairs activities.

§ 105-53.143 Automated Data and Telecommunications Service.

(a) *Creation and authority.* The Automated Data and Telecommunications Service (ADTS), headed by the Commissioner, Automated Data and Telecommunications Service, was established on July 15, 1972, by the Administrator of General Services. The Service was assigned responsibility for administering the Government-wide Automatic Data Processing (ADP) resources management program and the Government-wide telecommunications management program.

(b) *Functions.* ADTS is responsible for directing and managing Government-wide programs for the procurement and use of automatic data processing, office information systems, and telecommunications equipment and services; developing and coordinating Government-wide plans, policies, procedures, regulations, and publications pertaining to ADP and telecommunications activities; managing and operating the Automatic Data Processing (ADP) Fund and the Federal Telecommunications (FT) Fund; managing and operating the Federal Telecommunications System (FTS); planning and directing programs for improving Federal records and information management practices Government-wide; and managing and operating the Federal Information Centers.

(c) *Regulations.* Regulations pertaining to ADTS programs are published in 41 CFR Chapter 1 and 41 CFR Chapter 101, Subchapters B and F. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.144 Federal Property Resources Service.

(a) *Creation and authority.* The Federal Property Resources Service (FPRS), headed by the Commissioner, Federal Property Resources Service, was established on July 18, 1978, by the Administrator of General Services to carry out the utilization and disposal functions for real and personal property and the management of the Strategic and Critical Materials Stockpile.

(b) *Functions.* FPRS is responsible for the reuse of excess real and personal property (except ADP) holdings of the

United States Government; maintenance, repair, and rehabilitation of in-use personal property; the donation or sale of surplus real and personal property; and acquiring, maintaining quality, storing, and disposing of the nation's inventory of strategic and critical materials essential to the military and industrial requirements of the United States in times of emergency.

(c) *Regulations.* Regulations pertaining to FPRS programs are published in 41 CFR Chapters 1 and 5A, and 41 CFR Chapter 101, Subchapters C and H. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.145 Federal Supply Service.

(a) *Creation and authority.* The Federal Supply Service (FSS), headed by the Commissioner, Federal Supply Service, was established on December 11, 1949, by the Administrator of General Services to supersede the Bureau of Federal Supply of the Department of the Treasury, which was abolished by the Federal Property and Administrative Services Act of 1949.

(b) *Functions.* FSS is responsible for determining supply requirements; procuring personal property and nonpersonal services; developing Federal standard purchase specifications and commercial item descriptions; standardizing commodities purchased by the Federal Government; cataloging items of supply procured by civil agencies; managing GSA's Business Service Center Program; and ensuring continuity of supply operations during defense emergency conditions.

(c) *Regulations.* Regulations pertaining to FSS programs are published in 41 CFR Chapters 1, 5, and 5A, and 41 CFR Chapter 101, Subchapters A and E. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.146 National Archives and Records Service.

(a) *Creation and authority.* The National Archives and Records Service (NARS), under the direction of the Archivist of the United States, was established on December 11, 1949, by the Federal Property and Administrative Services Act of 1949 to succeed the National Archives Establishment originally established by the Act of June 19, 1934 (48 Stat. 1122).

(b) *Functions.* NARS is responsible for providing economical storage in Federal records centers for semiactive and noncurrent Federal records; appraising and scheduling records for appropriate disposition; selecting, preserving, and

servicing the permanently valuable noncurrent records of the Federal Government; publishing the laws, constitutional amendments, Presidential documents, and administrative regulations having general applicability and legal effect; and providing for the preservation, publication, and administration of the historical materials in Presidential libraries operated by GSA.

(c) *Regulations.* Regulations pertaining to NARS programs are published in 1 CFR Chapters I and II; 41 CFR Chapter 101, Subchapter B; and 41 CFR Parts 105-61 and 105-63. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.147 Public Buildings Service.

(a) *Creation and authority.* The Public Buildings Service (PBS), headed by the Commissioner, Public Buildings Service, was established on December 11, 1949, by the Administrator of General Services to supersede the Public Buildings Administration, which was abolished by the Federal Property and Administrative Services Act of 1949.

(b) *Functions.* PBS is responsible for the design, construction, management, maintenance, operation, alteration, extension, remodeling, preservation, repair, improvement, protection, and control of buildings, both federally owned and leased, in which are provided housing accommodations for Government activities; the acquisition, utilization, custody, and accountability for GSA real property and related personal property, and for the Government-wide safety program as it relates to GSA public buildings, and the GSA employee safety and health program; the implementation of Executive Order 11593; and coordinating GSA's activities towards improving the environment as required by the National Environmental Policy Act of 1969.

(c) *Regulations.* Regulations pertaining to PBS programs are published in 41 CFR Chapters 1 and 5B, and 41 CFR Chapter 101, Subchapters D and H. Information on availability of the regulations is provided in § 105-53.116.

§ 105-53.148 Transportation and Public Utilities Service.

(a) *Creation and authority.* The Transportation and Public Utilities Service (TPUS), headed by the Commissioner, Transportation and Public Utilities Service, was established February 1, 1979, by the Administrator of General Services to be responsible for the transportation and public utilities functions formerly assigned to the Federal Supply Service.

(b) *Functions.* TPUS is responsible for developing and implementing Government-wide policies and regulations governing the acquisition and use of transportation and public utilities in the executive agencies; managing the operation of interagency motor pools and motor transport systems; providing procurement support to all civilian and military agencies for nontactical motor vehicles and related equipment; assisting in the improvement of transportation and traffic practices of executive agencies; representing the consumer interest of Federal agencies before public utility regulatory bodies and providing procurement support for public utilities (except telecommunications); auditing transportation bills paid by the U.S. Government; and developing and issuing Government-wide regulations governing transportation, travel, and relocation allowances for civilian employees of Federal agencies.

(c) *Regulations.* Regulations pertaining to TPUS programs are published in 41 CFR Chapter 101, Parts 101-7, 101-38, 101-39, 101-40, and 101-41. Information on availability of the regulations is provided in § 105-53.116.

Subpart C—Regional Offices

§ 105-53.150 Organization and functions.

Regional offices have been established in 11 cities throughout the United States. Each regional office is headed by a Regional Administrator, who is responsible to the Associate Administrator for Operations for the overall direction and administration of the regional office and for the total performance of GSA programs and activities within the region. The overall organizational structure for each region is identical and consists of the following: Regional Administrator, Executive Assistant, Office of Regional Counsel, Office of Project Control and Oversight, Office of Controller, Office of Public Buildings and Real Property, Office of Personal Property, and Office of Information Resources Management. In certain instances, regional offices are assigned national or interregional jurisdiction for a specific program. The geographic composition of each region is shown in § 105-53.151.

§ 105-53.151 Geographic composition; addresses and telephone numbers.

Regional Offices—General Services Administration

Region and Address

No. 1. (Comprising the States of

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont); John W. McCormack Building, Post Office and Courthouse, Boston, MA. 02109. Telephone: 617-232-2100.

No. 2. (Comprising the States of New Jersey and New York, the Commonwealth of Puerto Rico and the Virgin Islands. Exception: FPRS Real and Personal Property functions for the Commonwealth of Puerto Rico and the Virgin Islands are administered by Region 4); 26 Federal Plaza, New York, NY 10007. Telephone: 212-264-3311.

No. 3. (Comprising the States of Maryland, Virginia (except those counties within National Capital Region boundaries), West Virginia, Pennsylvania, and Delaware); Ninth and Market Streets, Philadelphia, PA 19107. Telephone: 215-597-3311.

No. 4. (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; and the FPRS Real and Personal Property functions for the Commonwealth of Puerto Rico and the Virgin Islands); 75 Spring Street SW., Atlanta, GA 30303. Telephone: 404-221-3200.

No. 5. (Comprising the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin); 230 South Dearborn Street, Chicago, IL 60604. Telephone: 312-353-4401.

No. 6. (Comprising the States of Iowa, Kansas, Missouri, and Nebraska); 1500 East Bannister Road, Kansas City, MO 64131. Telephone: 816-926-7201.

No. 7. (Comprising the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas); 819 Taylor Street, Fort Worth, TX 76102. Telephone: 817-334-2321.

No. 8. (Comprising the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming); Building 41, Denver Federal Center, Denver, CO 80225. Telephone: 303-234-3131.

No. 9. (Comprising Guam and the States of Arizona, California, Hawaii, and Nevada); 525 Market Street, San Francisco, CA 94105. Telephone: 415-556-9000.

No. 10. (Comprising the States of Alaska, Idaho, Oregon, and Washington); GSA Center, Auburn, WA 98002. Telephone: 206-396-5000.

National Capital Region (RW). (Comprising the District of Columbia, the Counties of Montgomery and Prince Georges in Maryland; and the City of Alexandria and the Counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia); Seventh and D Streets, SW, Washington, DC 20407. Telephone: 202-655-4000.

Dated: May 18, 1982.

Bond R. Faulwell,

Director of Organization and Personnel.

[FR Doc. 82-14507 Filed 5-26-82; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6325]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended effective the dates listed within this rule because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial

assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Federal Emergency Management Agency's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director of State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Section 64.6 is amended by adding in alphabetical sequence new entries to the table

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date ¹
Arizona: Navajo	Unincorporated areas	040066B	Jan. 30, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Aug. 23, 1974 and Jan. 30, 1979.	June 1, 1982.
Alaska:					
Wrangell-Petersburg division	Petersburg, city of	020074B	July 25, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	June 14, 1974 and Feb. 4, 1977.	Do.
Sitka division	Sitka, city and borough of	020006B	Nov. 8, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	June 26, 1974, and Sept. 12, 1975.	Do.
California:					
Humboldt	Eureka, city of	060062B	June 9, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 24, 1974 and Nov. 14, 1975.	Do.
Solano	Suisun City, city of	060372B	May 23, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 22, 1974 and June 11, 1976.	Do.
Tehama	Unincorporated areas	065064B	Apr. 23, 1971, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 7, 1978.	Do.
Florida: Hernando	Brooksville, city of	120333B	Oct. 30, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Feb. 21, 1975 and Nov. 21, 1975.	Do.
Illinois:					
Rock Island	Carbon Cliff, village of	170584B	May 23, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Apr. 12, 1974 and Apr. 16, 1976.	Do.
Kendall and LaSalle	Millington, village of	170346B	May 28, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Dec. 28, 1973 and Mar. 5, 1976.	Do.
Kendall	Newark, village of	170344B	Apr. 28, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Nov. 23, 1973 and Mar. 26, 1976.	Do.
Do	Yorkville, city of	170347B	Apr. 3, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 29, 1974 and Apr. 9, 1976.	Do.
Indiana:					
DuBois	Jasper, city of	180055B	June 24, 1971, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Oct. 26, 1973 and June 11, 1976.	Do.
Porter	Portage, city of	180202B	Aug. 8, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	July 26, 1974 and Oct. 31, 1975.	Do.
Iowa:					
Pottawattamie	Crescent, city of	190723A	Feb. 1, 1977, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Sept. 26, 1975.	Do.
Do	Underwood, city of	190494A	Oct. 28, 1977, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 26, 1976.	Do.
Kansas:					
Shawnee	Unincorporated areas	200331C	June 23, 1978, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Feb. 21, 1978 and Dec. 19, 1978.	Do.
Massachusetts:					
Berkshire	Hancock, town of	250025B	Sept. 25, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	June 28, 1974 and July 9, 1976.	Do.
Berkshire	Lee, town of	250028B	Oct. 3, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 22, 1974 and July 2, 1976.	Do.
Norfolk	Stoughton, town of	250253B	Mar. 4, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Aug. 2, 1974 and June 21, 1977.	Do.
Middlesex	Sudbury, town of	250217B	Aug. 1, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Aug. 23, 1974 and Dec. 10, 1976.	Do.
Do	Wayland, town of	250224B	Mar. 21, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	July 26, 1974 and Dec. 24, 1976.	Do.
Worcester	West Brookfield, town of	250346B	June 25, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	July 26, 1974 and Oct. 1, 1976.	Do.
Berkshire	West Stockbridge, town of	250045B	July 23, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	July 26, 1974 and Aug. 22, 1978.	Do.
Plymouth	Mattapoisett, town of	255214A	June 18, 1971, emergency; Mar. 16, 1973, regular; June 1, 1982, suspended.	Jan. 9, 1976.	Do.
Michigan:					
Monroe	Luna Pier, city of	260150B	Jan. 26, 1973, emergency; June 1, 1982, regular; June 1, 1982, suspended.	June 28, 1974 and Apr. 2, 1976.	Do.
Lenawee	Tecumseh, city of	260117B	Dec. 17, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 24, 1974 and June 11, 1976.	Do.
Kent	Walker, city of	260110B	Apr. 6, 1973, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Oct. 12, 1973 and June 18, 1976.	Do.
Minnesota: Nobles	Adrian, city of	270318B	May 2, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 3, 1974 and May 21, 1976.	Do.
Missouri:					
Jasper	Carl Junction, city of	290179B	Oct. 28, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Feb. 8, 1974 and Aug. 6, 1976.	Do.
Stoddard	Dexter, city of	290424B	Aug. 13, 1971, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 10, 1974 and Apr. 25, 1975.	Do.
Laclede	Lebanon, city of	290197B	Aug. 30, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 17, 1974 and Jan. 2, 1976.	Do.
Nebraska: Otoe	Talmage, village of	310167B	Dec. 23, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.		Do.
Nevada: Lincoln	Caliente, city of	320015B	Aug. 22, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 29, 1974 and May 2, 1975.	Do.
New Jersey:					
Salem	Carney's Point, township of	340424B	Mar. 3, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Nov. 5, 1976.	Do.
Bergen	Palisades Park, borough of	340061B	May 22, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Dec. 28, 1973 and June 18, 1976.	Do.
Gloucester	West Deptford, township of	340214B	Dec. 22, 1972, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 8, 1974 and July 15, 1977.	Do.
New York:					
Oswego	Cleveland, village of	360998B	Jan. 13, 1976, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 31, 1974 and June 4, 1976.	Do.
Onondaga	Marcellus, village of	360586B	July 25, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Apr. 12, 1974.	Do.
Cayuga	Port Byron, village of	360121C	Aug. 4, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 3, 1974, June 11, 1976 and July 29, 1977.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date ¹
Onondaga	Skaneateles, town of	360592A	Sept. 19, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Nov. 8, 1974 and Oct. 31, 1975.	Do.
North Carolina: Wayne	Goldsboro, city of	370255B	May 29, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Dec. 24, 1976	Do.
Ohio: Hamilton	Unincorporated areas	390204B	July 2, 1973, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Apr. 14, 1978	Do.
Oregon:					
Josephine	Cave Junction, city of	410107B	May 13, 1975, emergency; June 10, 1982, regular; June 1, 1982, suspended.	NSFHA	Do.
Yamhill	Dayton, city of	410252B	June 4, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Jan. 23, 1974 and Jan. 2, 1976.	Do.
Josephine	Unincorporated areas	415590B	Dec. 31, 1970, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Aug. 16, 1977	Do.
Pennsylvania:					
Beaver	Daugherty, township of	422313A	Feb. 4, 1976, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Dec. 27, 1974	Do.
Beaver and Lawrence	Ellwood City, borough of	420567B	Oct. 3, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 31, 1974 and May 7, 1976.	Do.
Blair	Hollidaysburg, borough of	420162B	Mar. 30, 1973, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Oct. 12, 1973 and May 21, 1976.	Do.
Beaver	North Sewickley, township of	421161B	Apr. 24, 1974, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Oct. 18, 1974 and May 7, 1976.	Do.
Do	Pulaski, township of	422328A	Dec. 31, 1975.	Dec. 20, 1974	Do.
Juniata	Susquehanna, township of	421746A	June 27, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Jan. 24, 1975	Do.
Texas:					
Angelina	Lufkin, city of	480009B	June 20, 1973, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Feb. 22, 1974 and July 9, 1976.	Do.
Tarrant	Watauga, city of	480613B	May 13, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 8, 1974 and June 4, 1976.	Do.
Washington: King	Bothell, city of	530075B	June 20, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	May 24, 1974 and June 20, 1975.	Do.
West Virginia:					
Kanawha	Cedar Grove, town of	540072B	June 26, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 8, 1974 and June 4, 1976.	Do.
Do	Chesapeake, town of	540074C	May 22, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 15, 1974, June 11, 1976 and Mar. 25, 1977.	Do.
Do	East Bank, town of	540077B	May 29, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Mar. 22, 1974 and Sept. 26, 1975.	Do.
Wisconsin:					
Kenosha	Twin Lakes, village of	550211B	June 24, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	June 7, 1974 and July 16, 1976.	Do.
Walworth	Whitewater, city of	550200B	Mar. 27, 1975, emergency; June 1, 1982, regular; June 1, 1982, suspended.	Jan. 9, 1974 and June 4, 1976.	Do.

¹ Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support)

Issued: May 18, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-14402 Filed 5-26-82; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 64

[Docket No. FEMA 6324]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638-6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building, Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at

protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A-95.

Pursuant to the provisions of 5 U.S.C.

605(b), the Associate Director, State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Georgia: Brooks	Unincorporated areas	130281B	May 3, 1982, emergency; May 3, 1982, regular.	Feb. 3, 1978, and Mar. 15, 1982.
New Jersey: Bergen	Saddle Brook, township of	340074B	June 10, 1974, emergency; Apr. 15, 1982, regular; Apr. 15, 1982, suspended; May 3, 1982, reinstated.	Mar. 8, 1974, and July 30, 1976.
North Carolina: Greene	Snow Hill, town of	370110B	Dec. 24, 1974, emergency; Jan. 20, 1982, regular; Jan. 20, 1982, suspended; May 8, 1982, reinstated.	Dec. 28, 1973, and Oct. 10, 1975.
California:				
Humboldt	Fortuna, city of	060063B	May 3, 1982; suspension withdrawn	July 19, 1977.
Do	Rio Dell, city of	060064B	do	May 24, 1974, and Jan. 2, 1976.
Illinois:				
Sangamon	Pawnee, village of	170602C	do	May 17, 1974, June 4, 1976, and Jan. 26, 1979.
Sangamon	Thayer, village of	170804C	do	Mar. 22, 1974, June 4, 1976, and July 13, 1979.
Indiana: Boone	Lebanon, city of	180013B	do	May 3, 1974, and Jan. 16, 1976.
Iowa: Polk	Johnston, city of	190745C	do	Apr. 1, 1977, and Jan. 16, 1979.
Louisiana:				
St. Martin Parish	Henderson, Town of	220189B	do	June 7, 1974, and Aug. 22, 1975.
St. Landry Parish	Unincorporated areas	220185B	do	Dec. 6, 1977.
St. Martin Parish	do	220178B	do	Dec. 27, 1974, and Oct. 25, 1977.
Maine: Cumberland	Bridgton, town of	230041B	do	Jan. 22, 1974, and Sept. 24, 1976.
Minnesota:				
Faribault	Blue Earth, city of	270116B	do	Jan. 9, 1974, and June 4, 1976.
Freeborn	Emmons, city of	270657A	do	Dec. 27, 1974.
Freeborn	Unincorporated areas	270134A	do	Mar. 24, 1978.
Do	Glenville, city of	270137B	do	Mar. 8, 1974, and Apr. 16, 1976.
Watowwan	St. James, city of	270518A	do	July 30, 1976.
Freeborn	Twin Lakes, city of	270139B	do	Aug. 2, 1974, and June 4, 1976.
New Hampshire: Grafton	Plymouth, town of	330072B	do	May 3, 1974, and Apr. 9, 1976.
New York:				
Onondaga	Syracuse, city of	360595D	do	Apr. 12, 1974, Dec. 26, 1975, May 14, 1976, and July 15, 1977.
Broome	Windsor, town of	360059B	do	June 28, 1974, and Aug. 27, 1976.
Oregon: Jackson	Phoenix, city of	410097B	do	June 21, 1974, and Jan. 16, 1976.
Pennsylvania:				
Erie	LeBoeuf, township of	422415A	do	Jan. 10, 1975.
Northampton	Northampton, borough of	420726B	do	Apr. 5, 1974, and June 4, 1976.
Delaware	Norwood, borough of	420425A	do	July 30, 1976.
Chester	South Coatesville, borough of	420288B	do	May 31, 1974, and June 11, 1976.
Lawrence	Wayne, township of	422469B	do	Jan. 17, 1975, and Apr. 18, 1980.
Virginia: Arlington	Unincorporated areas	515520B	do	Oct. 1, 1969, and Dec. 31, 1976.
Washington: Yakima	Selah, city of	530226B	do	Jan. 16, 1974, and Jan. 23, 1976.
Wisconsin:				
Washington	Germantown, village of	550472B	do	June 28, 1974, and June 24, 1977.
Monroe	Unincorporated areas	550571B	do	July 7, 1978.

[National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director, State and Local Programs and Support]

Issued: May 18, 1982.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 82-14403 Filed 5-28-82; 8:45 am]

BILLING CODE 6718-03-M

Proposed Rules

Federal Register

Vol. 47, No. 103

Thursday, May 27, 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

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 81-019]

Importation of Cattle from the Republic of Ireland

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document would amend the import requirements for cattle from the Republic of Ireland to require additional herd history, animal isolation and tests for brucellosis, a contagious, infectious, and communicable disease of cattle. This action is necessary to prevent the introduction and dissemination of brucellosis in the United States through cattle imported from the Republic of Ireland. The intended effect of this proposal is to decrease the probability of the introduction of brucellosis through imported cattle.

DATE: Comments on or before July 26, 1982.

ADDRESS: Written comments should be submitted to the Deputy Administrator, Veterinary Services, APHIS, USDA, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Import-Export Staff, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed in conformance with Executive Order 12291 and has been classified not a "major rule." The proposed rule, if adopted, would not have a significant effect on the economy and would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action would require that an importer of cattle from the Republic of Ireland comply with additional procedures to insure the brucellosis free status of the cattle before exportation from the Republic of Ireland. Department records for the last three years show there were only two shipments of cattle from Ireland totaling 146 head of cattle imported by two persons. Additionally, it is not anticipated that the number of shipments of cattle from Ireland to the United States will increase in the future.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended, and sections 4 and 11 of the Act of July 2, 1962 (21 U.S.C. 111, 134c and 134f), the Animal and Plant Health Inspection Service is considering amending Part 92, Title 9, Code of Federal Regulations.

Section 92.6(a) (9 CFR Part 92.6(a)) presently requires that, except as provided in §§ 92.20 and 92.35 (b) and (c), all cattle offered for importation from any part of the world, except for immediate slaughter, shall be accompanied by a satisfactory certificate of a salaried veterinary officer of the national government of the country of origin showing that the animals have been tested for tuberculosis and brucellosis with negative results within 30 days of the date of their exportation.

Cattle imported from the Republic of Ireland under § 92.6(a) have been associated with the introduction of brucellosis into the United States. Therefore, to protect the livestock of the United States, the importation requirements relating to brucellosis testing of cattle from the Republic of Ireland presently in effect would be

amended. The effect of this action would be to increase the number of brucellosis tests and increase the length of time it would take to certify cattle as eligible for importation from the Republic of Ireland.

Under this proposal, cattle originating in the Republic of Ireland would no longer qualify for importation under the provisions of § 92.6(a) which allows the importation of cattle on the basis of only one negative brucellosis test within 30 days of the date of entry. A new section, § 92.43, containing the brucellosis testing requirements for cattle imported from the Republic of Ireland would be added by this amendment. The effect of this action would be to require cattle imported from the Republic of Ireland to be accompanied by an Irish certificate showing that all the cattle are from a herd which has special, i.e., brucellosis qualified for export, herd status. The cattle would be required to be maintained as a herd for a minimum of 2 years prior to importation and the herd would not be permitted to contain cattle born to or nursed by brucellosis reactors or animals raised in a brucella affected herd because of persistent infection characterized by long incubation periods in approximately 5 percent of such animals. To maintain a brucellosis qualified for export herd status in the Republic of Ireland, a herd of cattle would be required to be tested for brucellosis annually, with negative results. In addition, all cattle entering such herd would be required to originate from herds which are also brucellosis qualified for export herds or the herd and the added cattle would be required to meet certain brucellosis test requirements. These test requirements would provide that all test eligible cattle in the herd, that is cattle over 6 months of age except steers and spayed heifers, were negative to the brucellosis agglutination test not less than 90 days after the last herd addition and the individual cattle moved to the new herd would be required to be negative to the brucellosis test within 30 days before movement to the herd or all test eligible cattle in the herd would be required to be negative for brucellosis no less than 180 days nor more than 12 months after the last herd addition.

In addition to originating from a qualified for export herd, the cattle to be

exported would be required to be tested twice and found negative for brucellosis by the plate or tube agglutination test, Brucellosis card test (Rose Bengal test) and the Complement Fixation (CF) test procedures conducted not less than 60 days nor more than 120 days from the date of export. Three types of tests are required in order to improve the detection of the disease in its early stages. These tests react to different immuno-protein fractions that develop during the course of a brucella infection. Multiple dilutions are used in the plate or tube agglutination test and the CF test procedures to overcome problems associated with excess serum antibody concentrations (prozone) which, when present, produce unreliable test results. The 60- to 120-day interval between tests is proposed to increase the probability of detecting those animals affected with brucellosis but having a long incubation period. The standard procedures and interpretations for the tests as performed at the Republic of Ireland's brucellosis diagnostic laboratory would be required. Animals from the herd of origin and all other cattle having the opportunity for contact with an animal that would be interpreted to be an infected animal (reactor) under the Republic of Ireland's program would not be eligible for export to the United States in order to prevent the spread of disease.

In addition, it is proposed that the cattle to be exported be placed in isolation on separate premises a minimum of 500 yards from the other livestock not destined for export to the United States and such isolation would be maintained for at least 60 days prior to export. The isolation premises separation distance of 500 yards and the maintenance of the animals in isolation for 60 days is felt necessary to prevent possible exposure to disease from other animals. Isolation facilities would be approved by a full-time, salaried, Government of the Republic of Ireland veterinary official. To further protect such cattle from possible exposure to brucellosis, all cattle to be imported from the Republic of Ireland would be required to be conveyed from the isolation facilities directly to the port of export without contact with other cattle not eligible for export to the United States.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock and livestock products, Quarantine, Transportation.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, would be amended in the following respects:

1. The first sentence in § 92.6(a) would be amended to read as follows:

§ 92.6 Diagnostic tests.

(a) *Tuberculosis and brucellosis tests of cattle.* Except as provided in §§ 92.20, 92.35 (b) and (c), and 92.43, all cattle offered for importation from any part of the world, except for immediate slaughter, shall be accompanied by a satisfactory certificate of a salaried veterinary officer of the national government of the country of origin showing that the animals have been tested for tuberculosis and brucellosis with negative results within 30 days of the date of their exportation: *Provided*, That the brucellosis test will not be required for steers, spayed heifers, or any cattle less than 6 months old.

2. Part 92 would be amended by adding a new § 92.43 to read as follows:

§ 92.43 Cattle from the Republic of Ireland.

(a) All Cattle to be imported from the Republic of Ireland shall be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Republic of Ireland showing that the cattle originated from a herd which is officially certified by the Republic of Ireland as a brucellosis qualified for export for export herd and that the cattle meet the requirements in § 92.43(c).

(b) A brucellosis qualified for export herd is a herd in which all of the cattle have been maintained as a herd unit for at least two years prior to importation and all of the test eligible cattle in the herd (i.e., cattle over 6 months of age, except steers and spayed heifers) have been tested annually for brucellosis and found negative in accordance with Republic of Ireland requirements for at least two years prior to importation. The most recent negative herd test must have been conducted within 12 months of the date of importation. In addition:

(1) Such herd unit may include cattle which were born and raised within such herd unit during the two year period, or cattle which were moved directly to the herd from another herd unit of like status; or

(2) Such herd unit may include other cattle (except brucellosis reactors, suspects and animals listed in § 92.43(c)(1)) if:

(i) Such other cattle have been tested for brucellosis and found negative within 30 days prior to entry into the herd unit and all eligible cattle in the herd unit have been tested for brucellosis and found negative not less than 90 days following the date when the last of the other cattle had been added to the herd unit; or

(ii) All eligible cattle in the herd unit have been tested negative for brucellosis no less than 180 days nor more than 12 months (365 days) following the date when the last of the other cattle had been added to the herd unit.

(c) The certificate accompanying cattle offered for importation from the Republic of Ireland shall show that the cattle are from a brucellosis qualified for export herd and that they meet the following requirements:

(1) The cattle to be exported were not born to or nursed by brucellosis reactors and they were not born in a herd at the time the herd was under quarantine due to brucella infection.

(2) The cattle were placed in an isolation facility approved by a full-time, salaried, Government of Ireland veterinary official, on separate premises a minimum of 500 yards from other livestock not destined for export to the United States for at least 60 days prior to export.

(3) The cattle were negative to the following tests conducted not less than 60 nor more than 120 days from the date of export and a second set of tests conducted within 30 days of the date of export:

(i) Plate or Tube agglutination test conducted in dilutions to detect reactions at 30, 60, 120, and 240 International Units per milliliter (IU/ml);

(ii) Brucellosis card test (Rose Bengal test); and

(iii) Complement Fixation (CF) test conducted in dilutions to detect prozone reactions, when present.

(4) Cattle are eligible for entry only if classified as negative at 30 IU to the Plate or Tube agglutination test, negative to the brucellosis card test and negative to the Complement Fixation test as performed and interpreted by standard methods at the Republic of Ireland Brucellosis Diagnostic Laboratory. Any animal exhibiting a prozone serological reaction is ineligible for export to the United States.

(5) Cattle showing a serological titer more than 60 IU to the Plate or Tube agglutination test, or a reaction to the

Brucellosis card test (Rose Bengal) or CF test that would be interpreted to be an infected animal (reactor) under the Republic of Ireland brucellosis control program, animals from that herd of origin and all other cattle having the opportunity for contact with the reactor animal shall not be eligible for export to the United States. Brucellosis bacteriologically positive animals, if known, regardless of serologic reactions, are not eligible for importation nor are any animals in contact with such animals.

(6) The cattle were moved directly to the port of export from the isolation facility without contact with any other cattle which are not qualified for export to the United States.

(d) The certificate accompanying the cattle offered for importation must also show the dates and places of testing, names of the consignor and consignee, and descriptions of the cattle, including breed, ages, markings, and tattoo and eartag numbers.

All written submissions made pursuant to this proposed rule will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 815, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the Federal Register.

Done at Washington, D.C., this 21st day of May 1982.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 82-14393 Filed 5-26-82; 8:45 a.m.]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-82-6]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of

FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before July 26, 1982.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. —, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 18, 1982.

John H. Cassady,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

Docket No.	Petitioner	Description of the rule requested
Petitions for Rulemaking		
22773	T. W. Smith Engine Co.	Description of Petition: To delete § 91.175 which allows aircraft engine manufacturers to designate their overhauled engines as being "zero time engines." Regulations Affected: 14 CFR Part 91. Petitioner's Reasons for Rule: Petitioner contends: 1. Rule is not true. Engines are not zero time. 2. Flying public is being misled. 3. No history of operating time is being kept. 4. Discriminatory towards other engine overhaulers and at variance with Federal Fair Trade legislation.
22774	Karen M. Woodside	Description of Petition: To amend § 137.39 to require (1) written approval by an official or a governing body of a political subdivision when operations dispensing economic poisons are planned; (2) that the public be informed of such operations via some effective means (i.e., newspapers, television, etc.); (3) that a plan for each complete operation be approved by the FAA district office having jurisdiction; and (4) that the operations plan specify what registered economic poison is to be used and the time of the intended operation (including rain dates). Regulations Affected: 14 CFR Part 137. Petitioner's Reason for Rule: The Petitioner contends: " * * * The proposed regulations would act to update the existing regulations. It would be in the public interest so that in the spring and summer of the year people would not be taken by surprise and thus not have to run for cover everytime they heard the sound of an airplane engine. This regulation would also put a responsibility on the locality for approval, making the residents aware of the spraying operation. Areas wanting to be sprayed could have no problem in being sprayed. Persons having serious health problems could be attending the decision making meetings and present their concerns. This way they could be communicating with their fellow residents (many of whom are totally unaware of the existing health problems). As it stands now people can hire a pilot and even though the next door property is being sprayed, the neighboring resident would not know about it until the plane came over." * * *
22781	Accelerated Ground Training, Inc.	Description of Petition: To amend § 63.39(a) to allow the Flight engineer practical test to be conducted in an approved flight simulator in addition to conducting it, in flight, in an airplane. Regulations Affected: 14 CFR § 63.39(a). Petitioner's Reason for Rule: At the present time the practical test for a Flight Engineer Certificate may only be conducted in an airplane. Certain exemptions have been granted to conduct practical tests in simulators if the applicant Flight Engineer obtains 12 hours of flight time under the supervision of a qualified Flight Engineer. The proposed amendment would obviate the need for such exemptions.

Docket No.	Petitioner	Description of the rule requested
Petitions for Rulemaking—Continued		
22618	Air Transport Association	<i>Description of Petition:</i> To amend Part 121 Appendix H for incremental implementation and approval of advanced simulators from Phase I through Phase III. There are substantial costs involved in obtaining approval through Phase III. An operator is required to transit from Phase I to Phase II and III at required times or else lose the authority granted in Phase I. The proposed amendment would continue any authority in the appropriate phases without regard to time constraints, would provide for additional authorities in the various phases, and eliminate some of the equipment capability requirements in the various phases. <i>Regulations Affected:</i> 14 CFR Part 121 Appendix H.
Petitions for Rulemaking: Withdrawn or Denied		
19952	Velcro USA, Inc.	<i>Description of Petition:</i> To amend 14 CFR §§ 31.23 & 31.25(b) to issue an airworthiness directive grounding all hot air balloons using Velcro closures to secure deflation panels; undertake testing, analysis, and other efforts to quantify stresses at work on hot air balloon envelopes and deflation panel closures; review type certifications of hot air balloons and compliance with regulations; and revise hot air balloon regulations to bring them into conformity with comparable regulations for other types of aircraft. <i>Denied 2/26/82.</i>
19344	Aviation Training Enterprises, Inc.	<i>Description of Petition:</i> To amend 14 CFR Part 141 Appendix D paragraph (c)(2) to require two solo cross-country flights with landings at three points, each of which is more than 100 nautical miles from the other points. The petitioner's proposal would allow only the home base airport to be common to both flights. <i>Denied 2/11/82.</i>
21133	Orestes J. Dioguardi	<i>Description of Petition:</i> To amend 14 CFR § 61.58(b)(1) to allow a certificated flight instructor who has past experience in a particular type of aircraft to conduct pilot-in-command (PIC) proficiency checks in aircraft requiring more than one required pilot crewmember. <i>Denied 3/29/82.</i>
18877	Peter W. Fairchild	<i>Description of Petition:</i> To amend 14 CFR § 61.57(a) to permit a certificated pilot who has not had a flight review within the preceding 24 months to operate an aircraft in solo flight as directed by a certificated flight instructor or other designated person. <i>Denied 2/22/82.</i>
21298	Town-Village Aircraft Safety and Noise Abatement Committee	<i>Description of Petition:</i> To amend 14 CFR §§ 45.25(a) and 45.29 to require fixed-wing turbojet aircraft weighing over 12,500 pounds to display nationality and registration marks at least 24 inches high and 12 inches wide on the undersides of each wing and in a sharply contrasting color so as to be easily readable by a person with 20/20 vision on the ground. <i>Denied 4/2/82.</i>
21595	Irwin Diamond	Amend 14 CFR § 121.538(a) to delete the following language: "remove all X-ray and scientific film from their carry-on baggage and items before inspection. If the X-ray system exposes any carry-on baggage or item to more than one milliroentgen during the inspection, the certificate holder shall post a sign which advises passengers to remove film of all kinds from their carry-on baggage and items before inspection" and insert in lieu thereof the following: "remove all film from their carry-on baggage and items before inspection. The certificate holder shall post a sign which advises passengers that 'this X-ray machine is not film safe' or in the alternative that 'X-ray inspection may affect ordinary undeveloped film.'" The petitioners state that the signs are inaccurate, untruthful, misleading, and contrary to scientific fact and personal experience of travelers in that the X-ray machine even if they expose ordinary undeveloped film to one-half of one milliroentgen of radiation can damage the film either through one dose of radiation or the cumulative effect of several inspections. <i>Denied 4/27/82.</i>

[FR Doc. 82-14252 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39**[Docket No. 82-NM-33-AD]****Airworthiness Directives: Aerospatiale (SUD) Caravelle SE-210 Airplanes****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking.

SUMMARY: This Notice proposes a new Airworthiness Directive (AD) which would require inspection of certain structural components on Aerospatiale (SUD) Caravelle SE-210 airplanes to detect cracks and corrosion in the wings and faulty components in the landing gear and replacement or modification of these components as necessary. This action is prompted by notification by the cognizant civil air authority that certain unsafe conditions may exist or may develop which, if uncorrected, could compromise the structural integrity of the wing and landing gear.

DATES: Comments must be received no later than August 25, 1982. Compliance schedule as prescribed in the body of the AD.

ADDRESS: The applicable service bulletins may be obtained from: Societe Nationale Industrielle Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France, Attention: M. Roger

Adam. These documents may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Certification Branch, ANM-150S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A

report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Docket No. 82-NM-33-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Director Generale de L'Aviation Civile (DGAC) has classified certain Aerospatiale (SUD) service bulletin mandatory. These bulletins require inspections, replacements, and/or modifications to correct unsafe conditions that exist or may develop in Caravelle airplanes operating under French registry.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States,

the proposed AD would require inspections, replacements, and modifications as necessary on certain Aerospatiale (SUD) Caravelle airplanes that are operated under U.S. registry. Each numbered paragraph of this proposed AD identifies the specific unsafe condition to which it is directed and the related corrective action that would be required for resolution of the unsafe condition.

1. Possible fatigue damage to the main landing gear support system which could result in the collapse of the landing gear. (Reference SUD Service Bulletin 32-86, Revision 7, dated January 22, 1979, and/or SUD Service Bulletin 32-106, Revision 4, dated January 17, 1980.)

2. Possible fatigue or corrosion damage to lower wing center function fittings which could lead to wing structural failure. (Reference SUD Service Bulletin 57-40, Revision 10, dated April 25, 1978.)

3. Possible fatigue damage to wing rib 44 upper cap fittings which could lead to wing structural failure. (Reference SUD Service Bulletin 57-47, Revision 6, dated May 17, 1978.)

There are nine Caravelle airplanes currently on the U.S. Register, of which only eight or fewer are currently active. It is estimated that it will take approximately 300 man-hours per airplane to accomplish the required actions and that the average labor cost will be \$35 per man-hour. Repair parts are estimated at \$15,000 per airplane. Based on these figures, the cost impact per airplane of this AD is estimated to be \$25,500. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

Aerospatiale (formerly SUD): Applies to all Caravelle SE-210 Models III and VIR airplanes, certificated in all categories.

A. Unless already accomplished, accomplish the following within the time in service or number of flights specified in each paragraph below, after the effective date of this AD.

1. Compliance required in accordance with SUD Service Bulletin 32-86, Revision 7, dated January 22, 1979, or subsequent Director

Generale de L'Aviation Civile (DGAC) approved revision thereto, and/or in accordance with SUD Service Bulletin 32-106, Revision 4, dated January 17, 1980, or subsequent DGAC approved revision thereto, as noted, to preclude failure of the main landing gear support system.

a. Replace P/N 210.41.10.011-01 main landing gear hinge shaft aft end screws with P/N 210.41.10.100-01 screws (Service Bulletin 32-86) or with P/N 210.41.10.652-01 screws and 210.41.10.648-01 plugs (Service Bulletin 32-106) within the next 500 landings.

b. Inspect P/N 210.41.10.100-01 screws in accordance with Service Bulletin 32-86 within the next 500 lands or within 8,000 total landings, whichever occurs later, and thereafter at intervals not to exceed 5000 landings.

c. Inspect P/N 210.41.10.652-01 screws in accordance with Service Bulletin 32-106 within the next 500 landings or within 10,000 total landings, whichever occurs later, and thereafter at intervals not to exceed 5000 landings.

2. Compliance required in accordance with SUD Service Bulletin No. 57-40, Revision 10, dated April 25, 1978, or subsequent DGAC approved revision thereto, to preclude wing structural failure.

a. Inspect the lower wing center junction fitting 1₁ and 1₂ bores for corrosion, ovalization, or cracks within the next 200 hours time in service or within 15,000 hours total time in service, whichever occurs later, and thereafter at intervals not to exceed 4000 hours time in service.

b. Inspect the lower wing center junction fitting 1₁, 1₂, and 1₃ bores for corrosion, ovalization, or cracks within the next 200 hours time in service or within 18,000 hours total time in service, whichever occurs later, and thereafter at intervals not to exceed 8000 hours time in service.

c. Repair or replace fittings per the service bulletin instructions.

3. Compliance required in accordance with SUD Service Bulletin 57-47, Revision 6, dated May 17, 1978, or subsequent DGAC approved revision thereto to preclude wing structural failure. Inspect wing rib 44 upper cap fittings within the next 200 landings. If no cracks are found, reinspect at intervals not to exceed 2,000 landings thereafter. If cracks are found, repair as necessary and reinspect at intervals not to exceed 1,000 landings thereafter.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Chief, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Societe

Nationale Industrielle Aerospatiale, 37 Boulevard de Montmorency, Paris (16c), France. These documents also may be examined at the FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.—The FAA has determined that this document involves a proposed regulation that is not major under the provisions of Executive Order 12291, because of its minimal economic impact, as summarized earlier in this document. It has been further determined that this proposed regulation is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT." In addition, I certify that under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, since it involves few, if any, small entities.

Issued in Seattle, Washington, on May 19, 1982.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 82-14583 Filed 5-27-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-ANE-02]

Airworthiness Directives; Rolls-Royce, Ltd., RB211-22B and -524 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Airworthiness Directive.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) requiring fan retention modification on all Rolls-Royce, Ltd., RB211-22B series turbofan engines was published in the Federal Register, Vol. 47, No. 85, Page 18913, dated May 3, 1982.

This Notice duplicates a prior Notice of Proposed Rulemaking issued on February 16, 1982, published in the Federal Register Vol. 47, No. 50, on March 15, 1982, and was issued and published inadvertently. Therefore, it is being withdrawn. The original Notice of Proposed Rulemaking issued on February 16, 1982, shall remain the effective Notice for this project:

John E. Tigue, Engine and Propeller Standards Staff, Aircraft Certification Division, New England Region, (617) 273-7330.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator, the proposed AD published in the *Federal Register* on May 3, 1982, Vol. 47, No. 85, Page 18913, is hereby withdrawn.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1345(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

Issued in Burlington, Massachusetts, on May 20, 1982.

John B. Roach,

Acting Director, New England Region.

(FR Doc. 82-14562 Filed 5-26-82; 8:45 am)

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-ANE-16]

Airworthiness Directives; Rolls-Royce, Ltd., RB211-22B and -524 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) that would require removal from service of certain high pressure compressor rotor stage 1 and 2 disk assemblies on Rolls-Royce, Ltd., RB211-22B and -524 turbofan engines. The proposed AD is needed to prevent continued operation of disk assemblies suspected of containing material defects which could result in possible engine failure.

DATES: Comments must be received on or before June 30, 1982.

Proposed effective date August 30, 1982.

ADDRESSES: Send comments on the proposed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. 82-ANE-16, 12 New England Executive Park, Burlington, MA 01803.

The applicable Alert Service Bulletin may be obtained from Technical Publications Department, Rolls-Royce, Ltd., Derby, England DE2 8BJ.

A copy of the Alert Service Bulletin is contained in the Rules Docket at the above FAA address.

FOR FURTHER INFORMATION CONTACT:

John E. Tigue, Engine Standards Section, ANE-110, Engine and Propeller Standards Staff, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New

England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7330.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Information on the economic, environmental, and energy impact that might result because of adoption of the proposed rule is requested. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

The FAA has determined that certain high pressure compressor stage 1 and 2 disk assemblies manufactured since 1974, and installed in RB211-22B and -524 engines, are suspected of containing a localized deficiency in the material alloying elements which could result in possible engine failure. Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would require removal from service of certain high pressure compressor rotor stage 1 and 2 disk assemblies installed in Rolls-Royce RB211-22B and -524 model turbofan engines.

List of subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Rolls-Royce, Ltd.—Applies to Rolls-Royce, Ltd., RB211-22B and -524 turbofan model engines.

Compliance required as indicated unless already accomplished.

To preclude possible high pressure compressor rotor stage 1 and 2 disk assembly failure, the disk assemblies listed by part number and serial number in the Appendix of Rolls-Royce Alert Service Bulletin No. RB211-72-A5885,

Revision 2, dated October 30, 1981, must be withdrawn from service according to the following schedule:

After the effective date of this AD, none of the referenced disk assemblies may exceed 7,000 flight cycles in service.

After December 31, 1982, none of the referenced disk assemblies may exceed 3,500 flight cycles in service.

Replace with an FAA-approved, serviceable high pressure compressor rotor stage 1 and 2 disk assembly.

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

All persons affected by this directive who have not already received the referenced service bulletin from the manufacturer may obtain copies upon request to Technical Publications Department, Rolls-Royce, Ltd., P.O. Box 31, Derby, England DE2 8BJ. This document may also be examined at Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803. A historical file on this AD which includes the incorporated material in full is maintained by the FAA and at the New England Region Office.

Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Aircraft Certification Division, FAA, New England Region, may adjust the compliance date(s) specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities because the rule will affect only domestic air carriers of B-747 and L-1011 aircraft in which the RB211 engines are installed none of which are believed to be small entities. A draft regulatory evaluation prepared for this document is contained in the public docket, and a copy may be obtained by writing to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. 82-ANE-16, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on May 20, 1982.

John B. Roach,

Acting Director, New England Region.

[FR Doc. 82-14584 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 82-ASW-18]

Societe Nationale Industrielle Aerospatiale Model SA315B, SE3160, SA365B, SA316C, SA3180, SA318B, SA318C, and SA319B Alouette Helicopters

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This notice proposes to amend an existing Airworthiness Directive (AD) 73-13-02, applicable to Societe Nationale Industrielle Aerospatiale (S.N.I.A.S.) Alouette Helicopter Models SA315B, SE3160, SA316B, SA316C, SA3180, SA318B, SA318C, and SA319B. The amendment will recognize certain modifications incorporated by S.N.I.A.S. in production to correct a problem of oil loss. This amendment is necessary because these modifications conflict with current requirements of the AD.

DATES: Comments must be received on or before June 28, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 82-ASW-18, P.O. Box 1689, Fort Worth, Texas 76101.

The applicable service bulletins may be obtained from: Aerospatiale Helicopter Corporation, Technical Library, 2701 Forum Drive, Grand Prairie, Texas 75051, telephone (214) 641-0000, telex number 730 489.

A copy of each of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, P.O. Box 1689, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, or Sam Brodie, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-4911, extension 502.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, including economic impact data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments and information submitted will be available, both before and after the closing date for comments, in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Southwest Region, Office of Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 82-ASW-18, P.O. Box 1689, Fort Worth, Texas 76101.

Discussion of Proposed Amendment

The purpose of Airworthiness Directive, AD 73-13-02, Amendment 39-1666 (38 FR 15501) as amended by Amendment 39-2527 (41 FR 8337) is to prevent failure of the main drive shaft and freewheel assembly, P/N 3160S.60.00.000 or 3160S.60.10.000 as a consequence of inadequate lubrication on Aerospatiale Helicopter Model Nos. SA315B, SA3160, SA316B, SA316C, SA3180, SA318B, SA318C, and SA319B. The AD required inspection of the oil level in the freewheel assembly at successive intervals of 25 hours' time in service. If the oil level is found below limits, the freewheel assembly must be removed, inspected for damage, and modified. Conditional modifications consist of installation of a plug, P/N 340A.32.0114.20, in the oil passage between the main gearbox and freewheel assembly. This allows lubrication of the freewheel independent of the main gearbox, and installation of a new design torque shaft P/N 3160S.60.10.001. The modified freewheel assembly is to be identified as P/N 3160S.60.10.000. Installation of the plug, P/N 340A.32.0114.20, is to be accomplished in accordance with provisions of Aerospatiale Service

Bulletin No. 65.85 dated November 10, 1971. Continued periodic inspection of the freewheel oil level at each successive 25 hours' time in service is required after modification.

The inspection and modification requirements of AD-73-13-02, Amendment 39-1666 as amended by Amendment 39-2527, are based on Aerospatiale (S.N.I.A.S.) Service Bulletin Nos. 65-85 and 05.42, dated November 10, 1971, for all affected helicopter models except SA315B. Requirements for the oil plug installation on SA315B models are based on Aerospatiale Service Bulletin No. 65.07, also dated November 10, 1971.

Aerospatiale (S.N.I.A.S.) Mandatory Service Bulletin Nos. 65.81 and 05.65 were issued on February 14, 1979, superseding Service Bulletin Nos. 65.85 and 05.42 respectively. Effectivity of Service Bulletin Nos. 65.81 is stated as all Alouette Helicopters fitted with freewheel P/N 3160S.60.10.000, main gearbox P/N 3160S.62.00.000 or 319A.62.00.000, and clutch unit P/N 3180S.63.10.000, 3160S.63.20.000, or 319A.63.00.000. Effectivity of Service Bulletin No. 05.65 is given as all Alouette Helicopters having the freewheel, main gearbox and clutch unit modified per Service Bulletin No. 65.81, dated February 14, 1979.

Service Bulletin No. 65.81 is a combination of six production modifications to improve sealing of main gearbox to freewheel to clutch coupling. The service bulletin specifies removal of the plug, P/N 340A.32.0114.20, installed in accordance with Service Bulletin No. 65.85 (or AD 73-13-02), accompanied by installation of an improved sealing system. Service Bulletin No. 65.81 also indicates that the provisions have been incorporated on some helicopters during production. It also indicates that all newly produced spares incorporate the provisions of the service bulletin.

If the improved sealing of Service Bulletin No. 65.81 has been accomplished, it is unnecessary to accomplish Service Bulletin No. 65.85 as currently required by AD 73-13-02 when the freewheel oil level is found below limits. Therefore, it is proposed to amend paragraph (e)(4) of AD 73-13-02, Amendment 39-2527, to reflect accomplishment of Service Bulletin No. 65.81 as an equivalent means of compliance.

Service Bulletin No. 05.65 specifies inspection of freewheel oil level after ground operation or flight with a new or overhauled main gearbox which incorporates the provisions of Service Bulletin No. 65.81, and thereafter at intervals not exceeding 100 hours' time

in service. The inspection specified by Service Bulletin No. 05.65 is to be accomplished within 10 minutes after rotor stopping in a manner identical to paragraph (c)(1) and (c)(2) and AD 73-13-02. When the oil level is found below limits, the removal and inspection procedures specified by the service bulletin corresponds with paragraphs (e)(1), (e)(2), (e)(3), and (e)(5), of AD 73-13-02. Service Bulletin No. 05.65 also specified replacement of the freewheel if the hub blend radius is found to be 1.6 mm instead of 5.0 mm. This hub is on the freewheel housing, which is not considered by AD-73-13-02. Therefore, it is proposed to amend paragraphs (e)(2) of AD 73-13-02, Amendment 39-1666 as amended by Amendment 39-2527, to require inspection of the flange blend radius on the freewheel housing in agreement with Service Bulletin No. 05.65. It is also proposed to amend paragraph (f) of the AD and add two new paragraphs (f)(1) and (f)(2) to implement periodic inspection intervals appropriate to the type of rework performed.

List of subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) by revising paragraphs (e)(2), (e)(4), and (f) and by adding new paragraphs (f)(1) and (f)(2) for AD 73-13-02, Amendment 39-1666 (38 FR 15501) as amended by Amendment 39-2527 (41 FR 8337) as follows:

Change subparagraphs (e)(2) and (e)(4) to read as follows:

(e)(2) For assemblies, P/N 3160S.60.00.000, other than those referred to in subparagraph (e)(1), remove the assembly and inspect the fillet between the torque shaft and the hub and the freewheel housing and hub for cracks using dye penetrant and a glass of at least 10-power magnification, or an FAA approved equivalent process. Also, inspect the flange fillets for proper radius of 5.0 mm. If cracks are found, before further flight, replace the affected part with a serviceable part of the same or an approved subsequent part number. Replace any torque shaft or freewheel having a hub fillet radius less than 5.0 mm with one having 5.0 mm radius.

(e)(4) Unless already accomplished, install provisions for lubrication of the freewheel shaft assembly independently of the main gearbox oil system (plug P/N 340A.32.0114.20) by incorporating Aerospatiale Modification AM 1077 in accordance with S.N.I.A.S. Alouette Service Bulletin No. 65.07, dated November 10, 1971, for Model SA315B, and No. 65.85, dated November 10, 1971, for other models, or an FAA approved equivalent; or

for models other than SA315B, install the Aerospatiale improved sealing system modifications for the main gearbox to freewheel and freewheel to clutch couplings in accordance with Issue 2 of S.N.I.A.S. Alouette Service Bulletin No. 65.81, dated February 14, 1979, or an FAA approved equivalent.

Change paragraph (f) and add subparagraphs (f)(1) and (f)(2) as follows:

(f) For main drive shaft and freewheel assemblies reworked in accordance with paragraph (e):

(1) If the provisions of Service Bulletin Nos. 65.07 or 65.85 are accomplished, comply with paragraph (a) and apply the limits of paragraph (b) within the next 5 hours' time in service, following the rework, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection; (2) If the provisions of Service Bulletin No. 65.81 are accomplished, comply with paragraph (a) and apply the limits of paragraph (c) within 10 minutes after ground or flight operation sufficient to obtain normal main gearbox operating temperature with the reworked freewheel and torque shaft assembly, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85)

Note.—The FAA has determined that this proposed regulation involves a regulation which is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is certified that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act since this revision extends the inspection interval for an estimated cost reduction of \$1,000 per aircraft. A draft evaluation has been prepared for this proposed regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Fort Worth, Texas, on April 30, 1982.

C. R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 82-14397 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-28]

Proposed Designation of Transition Area: Monahans, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to designate a transition area at Monahans, TX. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new instrument approach procedure to the Hurd Memorial Airport. This action is necessary to designate controlled airspace for the protection of aircraft executing a new standard instrument approach procedure (SIAP) using the Wink VORTAC. Coincident with this action, the airport is changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATE: Comments must be received on or before June 25, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart G § 71.181 as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Designation of the transition area at Monahans, TX, will necessitate an amendment to this subpart. This amendment will be required at Monahans, TX, since there is a proposed change in IFR procedures to the Hurd Memorial Airport.

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-ASW-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Monahans, TX New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Hurd Memorial Airport (latitude 31°34'54" N, longitude 102°54'25" W).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under

Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Fort Worth, TX, on May 18, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-14253 Filed 5-25-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASO-21]

Proposed Alteration of Transition Area, Elizabethtown, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Elizabethtown, Kentucky, Transition Area, by deleting reference to the existing Elizabethtown-Hardin County Airport (Ben Floyd Field) which is to be closed, and redesignating the Transition Area based on the new Elizabethtown-Hardin County Airport which recently opened.

DATE: Comments must be received on or before: August 10, 1982.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Chief, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 82-SO-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Chief, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will redesignate the Elizabethtown, Kentucky, Transition Area to provide controlled airspace for instrument flight operations in the vicinity of the new Elizabethtown-Hardin County Airport. The present airspace designation is predicated upon an airport that is to be closed. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Elizabethtown, Kentucky, Revised

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elizabethtown-Hardin County Airport (Lat. 37°41'14"N., Long. 85°55'25"W.); excluding the portion within Louisville, Kentucky, Transition Area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on May 19, 1982.

George R. LaCaille,
Acting Director, Southern Region.

[FR Doc. 82-14527 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-116 (New Mexico-15)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking.

AGENCY: Federal Energy Regulatory Commission, DoE.

ACTION: Notice of proposed rulemaking

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the

Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of New Mexico that the Atoka-Morrow Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on June 21, 1982. No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on June 7, 1982.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511, or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION: In the matter of high-cost gas produced from tight formations; Docket No. RM79-76-116 (New Mexico-15).

Issued: May 21, 1982.

I. Background

On April 9, 1982, the State of New Mexico Energy and Minerals Department (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Atoka-Morrow Formation located in Chaves County, New Mexico, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether New Mexico's recommendation that the Atoka-Morrow Formation be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service (formerly the U.S. Geological Survey) concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Atoka-Morrow Formation is located in Chaves County, New Mexico in Townships 7, 8, and 9 South, Ranges 28, 29, 30, and 31 East, NMPM. The average depth to the top of the Atoka-Morrow Formation is 8,100 feet. The gross thickness varies from 91 to 895 feet.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case 7492 convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Atoka-Morrow Formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before June 21, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket NO. RM79-76-116 (New Mexico-15), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE.,

Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than June 7, 1982.

List of Subjects in 18 CFR Part 271:

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703(d) is revised by adding new subparagraph (118) to read as follows:

§ 271.703 Tight formations.

(d) Designated tight formations.

(86) through (117) [RESERVED]
(118) Atoka-Morrow Formation in New Mexico. RM79-76-116 (New Mexico-15).

(i) Delineation of formation. The Atoka-Morrow Formation is located in Chaves County, New Mexico, approximately 23 miles northeast of Roswell, New Mexico. The Atoka-Morrow Formation is located in Township 7 South, Range 28 East, Sections 22 through 27, and 34 through 36; Township 7 South, Range 29 East, Sections 19 through 36; Township 7 South, Range 31 East, Sections 19 through 21, and 28 through 33; Township 8 South, Range 28 East, Sections 1 through 3, 10 through 15, 22 through 27, and 34 through 36; Township 8 South, Range 29 East, Sections 1 through 36; Township 8 South, Range 30 East, Sections 1 through 36; Township 8 South, Range 31 East, Sections 4 through 9, 16 through 21, and 28 through 33; Township 9 South, Range 28 East, Sections 1 through 3, and 10 through 15; Township 9 South, Range 29 East, Sections 1 through 18; Township 9 South, Range 30 East, Sections 1 through 18; Township 9 South, Range 31 East,

Sections 4 through 9, and 16 through 18.

(ii) Depth. The Atoka-Morrow Formation varies in thickness from 91 to 895 feet. The average depth to the top of the Atoka-Morrow Formation is 8,100 feet.

[FR Doc. 82-14404 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Proposed Customs Regulations Amendment Concerning Fees for Commercial Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Customs proposes to establish by regulation a new schedule of fees to be charged and collected for specific services provided by Customs officers to commercial aircraft to return to the Government the approximate costs of providing the services. This document invites comments on a proposal (1) to amend the Customs Regulations to authorize the Customs Service to establish a schedule for commercial aircraft fees. It also provides that a General Notice will be published in the *Federal Register* and Customs Bulletin periodically to revise these fees to reflect increased costs, and (2) to establish a new fee schedule to be used for the remainder of 1982.

DATE: Comments must be received on or before July 26, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Legal aspects—Paul Hegland, Carriers, Drawback and Bonds Division (202-566-5706);

Operational aspects—Alice M. Rigdon, Office of Inspection (202-566-8151); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229

SUPPLEMENTARY INFORMATION:

Background

Public Law 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978 (the "Act"), repealed sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58; 46 U.S.C.

329, 330, and 333), the statutory authority under which Customs had been charging and collecting fees for specific services provided to vessels by Customs officers.

Because these fees did not cover the costs of providing the services, section 214 of the Act (19 U.S.C. 58a) authorized the Secretary of the Treasury to establish a new schedule of fees to be charged and collected for furnishing these services. These fees are to be consistent with section 501 of the Independent Offices Appropriation Act, 1952 (31 U.S.C. 483a), the so-called "User Charges Statute," which provides that the costs of specific services for private interests shall be reimbursed to the Government. The vessel services are found in § 4.98(a), Customs Regulations (19 CFR 4.98(a)).

Section 1509(c) of Title 49, United States Code (49 U.S.C. 1509(c)), provides that the Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary.

Accordingly, the Secretary has determined to establish by regulation a schedule of fees to be charged and collected for specific services provided by Customs officers to commercial aircraft to return to the Government the approximate costs of providing the services. The services performed by Customs officers applicable to commercial aircraft are similar to the services performed by Customs officers applicable to vessels and found in § 4.98(a), Customs Regulations. The schedule of commercial aircraft services follows:

1. Entry of aircraft, including American, from foreign port;
2. Clearance of aircraft, including American, to foreign port;
3. Issuing permit to foreign aircraft to proceed from district to district, and receiving manifest;
4. Receiving manifest of foreign aircraft on arrival from another district;
5. Receiving post entry; and
6. Furnishing copy of official document, including certified outward foreign manifest and others not elsewhere enumerated.

The fees for these services would be based upon the direct costs of the Customs officers to perform the services. Section 1741(e), Title 49, United States Code (49 U.S.C. 1741(e)), provides that administrative overhead costs associated with any inspection or guarantee service required to be

performed by the United States Government, or any agency, thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

Private aircraft are not covered under this proposed rule because of the prohibitions of 49 U.S.C. 1741(a) and (b), which set forth limitations on specified charges. Section 1741(a) sets a maximum charge of \$25.00 for certain overtime services applicable to the private aircraft. Section 1741(b) provides that there shall be no payment for these private aircraft services if such services are performed on a week day and an officer on his regular tour of duty is available to perform such services. A "private aircraft" means any civilian aircraft not being used to transport persons or property for compensation or hire. Only commercial aircraft are covered by this proposal. A "commercial aircraft" is any civilian aircraft being used in the transportation of persons or property for compensation or hire.

Proposals Relating to Commercial Aircraft

1. This document proposes to amend Part 6, Customs Regulations (19 CFR Part 6), by adding a new § 6.26 to authorize the Customs Service to establish a schedule for commercial aircraft fees. It also provides that a General Notice will be published in the *Federal Register* and Customs Bulletin periodically to revise the fees to reflect changes in the rate of compensation paid to the Customs officers performing the service.

Customs has determined that each service is generally provided by the following Customs officers: 1. Inspector in the fifth step of a GS-9; 2. Inspector supervisor in the fifth step of a GS-12; 3. Clerk in the fifth step of a GS-5; 4. Clerical supervisor in the fifth step of a GS-6. Therefore, the fee charged for each service would (1) be based upon the amount of time the service requires of each of the 4 Customs officers and (2) equal the sum of the individual charges.

Customs considers the clerk's fee to be part of processing the service itself and not a separate administrative overhead charge. The clerk compiles records of transactions and provides a monthly summary of the fees by carrier and by carrier billing account for monthly billing.

2. This document also proposes to establish a new fee schedule which would become effective upon publication in the *Federal Register* as a Treasury Decision and remain in effect for the remainder of calendar year 1982.

Pertinent Data

The (1) estimated length of time reflected in the proposed new fee schedule required by each of the above Customs officers to perform his or her respective service, (2) the proposed charge for each respective service based on the hourly rate of pay of each Customs officer performing his or her respective service, and (3) the proposed total fee for the service rendered rounded off to the nearest tenth of a dollar follow:

Fee	Inspector time/fee	Inspector supervisor time/fee	Clerical time/fee	Clerical supervisor time/fee	Fee total
1. Entry of aircraft, including American, from foreign port.....	20 mins., \$4.83.....	2 mins., \$0.70.....	6 mins., \$0.96.....	0.6 mins., \$0.11.....	\$6.60
2. Clearance of aircraft, including American, to foreign port.....	20 mins., \$4.83.....	2 mins., \$0.70.....	6 mins., \$0.96.....	0.6 mins., \$0.11.....	6.60
3. Issuing permit to foreign aircraft to proceed from district to district, & receiving manifest.....	15 mins., \$3.63.....	1.5 mins., \$0.53.....	6 mins., \$0.96.....	0.6 mins., \$0.11.....	5.20
4. Receiving manifest of foreign aircraft on arrival from another district.....	15 mins., \$3.63.....	1.5 mins., \$0.53.....	6 mins., \$0.96.....	0.6 mins., \$0.11.....	5.20
5. Receiving post entry.....	15 mins., \$3.63.....	1.5 mins., \$0.53.....	6 mins., \$0.96.....	0.6 mins., \$0.11.....	5.20
6. Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.....	30 mins., \$7.26.....	3 mins., \$1.05.....	6 mins., \$0.96.....	0.6 mins., \$0.11.....	9.40

Explanation

Section 24.17(d), Customs Regulations (19 CFR 24.17(d)), provides that the reimbursable charge for regular compensation shall be computed in accordance with § 19.5(b), Customs Regulations (19 CFR 19.5(b)), which contains the computation of the rate per hour for regular pay. The charge shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee. The ratio of the annual number of working hours charged to Customs appropriation to the net number of annual working days is 137 percent.

The hourly rate utilized for the inspector is \$14.53, which is 137 percent of the hourly rate of pay of a Customs officer in the fifth step of a GS-9.

The hourly rate utilized for the inspector supervisor is \$21.08, which is 137 percent of the hourly rate of pay of a Customs officer in the fifth step of a GS-12.

The hourly rate utilized for the clerk is \$9.59, which is 137 percent of the hourly rate of pay of a Customs officer in the fifth step of a GS-5.

The hourly rate utilized for the clerical supervisor is \$10.70, which is 137 percent of the hourly rate of pay of a Customs officer in the fifth step of a GS-6.

Revenue

There were approximately 368,000 commercial aircraft arrivals in Fiscal Year 1981. It is estimated that \$6 million will be raised annually as a result of charging these fees.

Authority

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 214(b), 92 Stat. 904 (19 U.S.C. 58a), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 501, 65 Stat. 290 (31 U.S.C. 483a), section 1109, 72 Stat. 799, as amended (49 U.S.C. 1509(c)), section 53, 84 Stat. 236, as amended (49 U.S.C. 1741(e)).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available

for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Executive Order 12291

The proposed amendments do not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared for this regulatory project.

Regulatory Flexibility Act

It has been determined that this proposed rule, if promulgated, will have or is likely to have a significant economic impact on a substantial number of small entities. Therefore, the provisions of the Regulatory Flexibility Act relating to preparing an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable. An initial regulatory flexibility analysis, prepared

by the Customs Office of Economic Analysis, is attached to this document. Comments on the analysis are solicited and may accompany comments submitted on the proposal.

Drafting Information

The principal author of this document was Charles D. Rassin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 6

Customs duties and inspection, Imports, Air carriers, Aircraft.

Proposed Amendments

It is proposed to amend Part 6, Customs Regulations (19 CFR Part 6), by adding a new § 6.26 to read as follows:

PART 6—AIR COMMERCE REGULATIONS

§ 6.26 Commercial aircraft fees.

(a) The Customs Service shall publish a General Notice in the *Federal Register* and Customs Bulletin setting forth a schedule for commercial aircraft fees, to be revised periodically to reflect increased costs, for the following services: Fee No. and description of services—

- (1) Entry of aircraft, including American from foreign port.
- (2) Clearance of aircraft, including American, to foreign port.
- (3) Issuing permit to foreign aircraft to proceed from district to district, and receiving manifest.
- (4) Receiving manifest of foreign aircraft on arrival from another district.
- (5) Receiving post entry.
- (6) Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect until changed.

(b) The fees shall be calculated in accordance with §§ 19.5(b) and 24.17(d), Customs Regulations (19 CFR 19.5(b), 24.17(d)). The fees shall be based upon the amount of time the average service requires of the following Customs officers:

- (1) Inspector in the fifth step of a GS-9;
- (2) Inspector supervisor in the fifth step of a GS-12;
- (3) Clerk in the fifth step of a GS-5; and
- (4) Clerical supervisor in the fifth step of a GS-6.

(c) The party requesting an aircraft service described in paragraph (a) of this section for which reimbursable

overtime compensation is payable under 19 U.S.C. 267 or 19 U.S.C. 1451 and § 24.16 of this chapter, shall pay only the overtime charge and not both the overtime charge and the individual charge specified in the fee schedule for the particular Customs officer.

(d) The revised fee schedule shall be made available to the public in Customs offices.

(e) The respective fees shall be designated in correspondence and reports by the applicable fee number.

(f) The fees may be collected by Customs on a monthly billing basis or other method acceptable to Customs.

William von Raab,

Commissioner of Customs.

Approved: April 19, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

Regulatory Analysis on Proposed Amendments to the Customs Regulations to Levy Fees on Commercial Aircraft

Introduction

The U.S. Customs Service is proposing to amend the Customs Regulations in order to levy fees on commercial aircraft entering and departing the United States. The purpose of the fees would be to reimburse Customs for the inspectional services associated with the entry and clearance of commercial aircraft.

The Regulatory Flexibility Act requires that agencies publishing general notices of proposed rulemaking shall prepare and make available for public comment "initial regulatory flexibility analyses" unless the proposed rules will not have a "significant economic impact on a substantial number of small entities." Likewise, Executive Order 12291 of February 17, 1981 requires that regulatory impact analyses be prepared on all proposed rules deemed to be "major" rules (e.g., likely to result in an annual effect on the economy of \$100 million or more). Although the proposed rules on commercial aircraft fees are not considered to be major rules under E.O. 12291, they are subject to the Regulatory Flexibility Act since they will have, or are likely to have, a "significant economic impact on a substantial number of small entities." Accordingly, this initial regulatory impact analysis has been prepared, as required by the Regulatory Flexibility Act.

The data and conclusions of this analysis are subject to modification pending the receipt of public comments and additional data during the comment period specified in the notice of proposed rulemaking.

Statement of the Problem and Proposed Solution

The Customs Service does not (except for overtime services) currently charge commercial air carriers for the inspectional and related services associated with the entry and clearance of such carriers. However, Customs does currently charge such fees to vessels arriving and departing the United States. In order to apply the same types of fees to commercial air carriers as are

currently applied to vessels, and especially in order to help raise revenue as part of an overall effort to obtain "user" fees for Customs' services, the Customs Service is proposing to collect the various fees specified in the notice of proposed rulemaking above. Collection of such fees would raise approximately \$6.0 million of revenues annually for Customs.

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 624, 46 Stat. 759 (19 U.S.C. 1624), sec. 501, 65 Stat. 290 (31 U.S.C. 483a), sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 1509(c)), section 53, 84 Stat. 236, amended (49 U.S.C. 1741(e)).

Data and Analysis

Analysis of the economic impact of the proposed fees is somewhat hampered by sketchy and incomplete data on relevant arrivals and departures of commercial aircraft especially when dealing with "small" carriers. More complete data specific to small carriers are expected to be provided in response to the notice of proposed rulemaking. For the purposes of this analysis, "small" carriers are considered to be those commercial air carriers whose major revenues accrue from aircraft with a capacity of under 60 passengers (for passenger aircraft) or under 25,000 pounds of cargo (for cargo aircraft). A "commercial air carrier" encompasses "any civilian aircraft being used in the transportation of persons or property for compensation or hire."

Number of arrivals/departures, by large and small carriers, foreign and domestic.—Since the proposed fees differentiate between domestic and foreign carriers, it was necessary to obtain arrival/departure data for each of these two groups. In addition, it was necessary to obtain such data for "large" and "small" carriers, in order to best measure the economic impact on small entries. Unfortunately, such data are not available in a complete, consolidated fashion on flights crossing the U.S. border. Data were obtained from a number of sources, including the Customs Service, various sources in the transportation consulting field, and selected small air carriers.

Customs' data indicate that 368,166 commercial aircraft subject to Customs services arrived in the United States in fiscal year 1981. It is believed that a large portion of these arrivals consisted of large aircraft belonging to the major domestic and international carriers; the actual number of small aircraft arriving is unknown. Based on data collected by the Customs Service, it was determined that the percentages of international commercial aircraft arrivals and departures in fiscal year 1981 *excluding all-cargo flights, all flights to and from Canada, and flights to and from selected U.S. territories* were as follows:

¹Approximately 43 percent of these arrivals were in the Miami Customs Region. Slightly over 50 percent of the Miami Customs Region arrivals occurred in Puerto Rico and the Virgin Islands.

	Percent
Domestic carriers:	
Large	39.4
Small	13.9
Total domestic	53.3
Foreign carriers:	
Large	45.5
Small	1.2
Total foreign	46.7
Total U.S.-international flights	100.0

The percentages listed above cannot be applied to the total figure of 368,168 arrivals (and assumed 368,168 departures) because, as noted, the percentage data exclude all cargo flights, all flights to and from Canada, and flights to and from selected U.S. territories. Nevertheless, the percentages indicate that in terms of numbers of overall flights, large carriers are likely to pay a rather significant portion of the proposed fees.

Expected Revenue from the Proposed Fees.—The Customs Service estimates that collection of the proposed fees will raise \$6.0 million per year in revenues (based on fiscal year 1981 data). Of the \$6.0 million figure, approximately \$4.9 million would be a result of the \$6.60 fees on aircraft entry and aircraft clearances. It is also estimated that of the \$6.0 million in fees to be collected, domestic carriers will account for \$3.4 million (or an average of \$8.00 per domestic carrier flight) and foreign carriers will account for \$2.6 million (or an average of \$8.75 per foreign carrier flight).

The revenue estimates made above exclude any distorting effects which the proposed fees may have on the number of flights. However, it is believed that the proposed fees will have only a relatively small effect on the number of commercial carrier flights to/from the United States, and that aggregate revenue collections from the fees will consequently not be significantly affected.

Economic Impact of the Proposed Fees on the General Economy.—Even if the proposed fees were fully passed on to consumers of airline travel, the effect on the general economy would be negligible. The \$6.0 million in proposed fees represents a minuscule proportion of the amounts spent on tickets and cargo fees in the U.S. international air carrier industry. The overall economic effect on the general economy would be negligible.

Economic Impact of the Proposed Fees on Small Entities.—There are undoubtedly a "substantial number" of small carriers which will be subject to the proposed fees. In fiscal year 1981, 132 of the 162 domestic commercial air carriers listed as arriving or departing the U.S. (excluding flights to and from Canada and selected U.S. territories as well as all-cargo flights) were small carriers. Of the 128 foreign air carriers listed (excluding Canada, U.S. territories, and all-cargo), 24 were small carriers. Accordingly, a total of at least 156 small carriers would be subject to the proposed fees; to this number must be added the believed substantial number of small carriers providing U.S.-Canada service. Indeed, there are reported to be well over 1,000 domestic air taxi services with certification to fly to Canada; even if the

actual number of these services actually operating to Canada is well below 1,000, it is evident that a substantial number of small carriers will be subject to the proposed fees.

Of the at least small domestic carriers subject to the proposed fees, 19 are scheduled carriers; the remaining 114 are charter and air taxi services. Of the 19 scheduled domestic carriers, twelve have over one flight per day (seven of these have over 1,000 scheduled flights per year). Among the known small foreign carriers, only seven are scheduled carriers, and only two have over one flight per day. These data would indicate that even though a substantial number of known small air carriers will be subject to the proposed fees, it is likely that many of these carriers tend to be small charter of air taxi services with relatively few international flights.

It is possible that there will be a significant economic impact on at least the 12 known scheduled small air carriers having over one flight per day (excluding Canada, selected U.S. territory flights, and all-cargo). Preliminary calculations indicate that the costs for these carriers will range from a few thousand dollars for two or three carriers to as much as \$700,000 for at least one known carrier. Whether such costs are truly "significant" relative to various individual carrier operations will be better understood after the receipt of public comments from affected carriers; it is currently believed that the cost may indeed be significant. In addition, the proposed fee costs may have a significant economic impact on many small charter/air taxi services which fly abroad only sporadically; the limited seating capacity in many small aircraft would mean that the proposed fees would account for a disproportionate percentage of operating expenses, compared to expenses of larger carriers.

Small commercial air carriers are already subject to a number of fees which affect their costs and profits, including Customs overtime fees, the Federal Air Transportation Tax, and certain bonding fees; the imposition of the proposed additional new fees may be deemed to result in a significantly adverse economic impact. Since it is known that a Customs overtime fee of as little as \$20 is significant enough to presently cause certain small carriers to attempt to arrive during regular-duty hours if possible (to avoid the overtime fee), it may be that the proposed fees are also significant enough to affect certain small carrier operations.

Alternatives to the Proposed Amendments

Section 603 of the Regulatory Flexibility Act requires that initial regulatory flexibility analyses contain descriptions of significant alternatives to the proposed rule which "minimize any significant economic impact of the proposed rule on small entities." One alternative mentioned by the Act is "an exemption from coverage of the rule, or any part thereof, for such small entities." Accordingly, possible alternatives to this particular proposed rule would be to exclude all small carriers (i.e. aircraft of a capacity of 60 passengers or less or 25,000 pounds of cargo at less) from the proposed fees, or perhaps have a two-tier fee system as is currently charged on vessels.

Conclusion and Request for Comments

Evidence gathered in the course of this analysis indicates that there may indeed be a "significant economic impact on a substantial number of small entities" as a result of the imposition of the proposed fees. However, complete cost data specific to small carriers are not currently available. Accordingly, small carriers and carrier associations are especially encouraged to comment on the notice of proposed rulemaking, indicating in specific terms the effect of the proposed fees on their costs, profitability, competitiveness number of flights, employment, and overall operations, and listing or commenting on any of the stated or other alternatives. As encouraged by section 609 of the Regulatory Flexibility Act, the Customs service will attempt to pursue the direct notification of selected small carriers and carrier associations that may have an interest in this proposed rule.

[FR Doc. 82-14554 Filed 5-28-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Parts 211, 221, 231, 250, and 270

Procedures for Mineral Royalty Reporting of and Paying on Leases on Federal Lands, Outer Continental Shelf (OCS) Lands and Indian Lands

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period on proposed procedure.

SUMMARY: In response to requests for an extension of time to comment on the proposed voluntary royalty payment method for minerals leases as published in the Federal Register of April 28, 1982 (47 FR 18132), a 15-day extension is hereby granted. This extension will give the public more time to study and comment on the proposed procedure.

DATE: Comments on this proposed procedure must be received by June 14, 1982.

ADDRESS: Written comments may be mailed or delivered to Mr. Raymond A. Hicks, Chief, Branch of Rules and Procedures for Royalty Management, Minerals Management Service, Mail Stop 660, 12203 Sunrise Valley Drive, Reston, Virginia 22091, (703) 860-7311.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Hicks, (703 860-7311 or (FTS) 928-7311.

Dated: May 18, 1982.
 Daniel N. Miller, Jr.,
 Assistant Secretary of the Interior.
 [FR Doc. 82-14445 Filed 5-26-82; 8:45 am]
 BILLING CODE 4310-MR-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRC 2063-8]

Proposed Revision of the Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has submitted proposed revisions to its State Implementation Plan (SIP). The revisions include Continuous Emission Monitoring regulations and procedures, Alternative Opacity Limit regulations, emission standards for Volatile Organic Compounds (VOC) based on EPA Group II Control Technique Guidelines (Group II VOC Regulations) and a generic VOC bubble regulation. The revisions Change 25 PA. Code Chapters 121, 123, 127, 129 and 139. EPA is proposing approval of all these revisions, except the dry cleaning regulation. EPA is not taking action on the dry cleaning regulation at this time. EPA is also noting minor variations to EPA's recommended controls in the refinery fugitive emissions and the pneumatic rubber tire regulations. EPA considers these variations to be insignificant and is proposing to approve both regulations. EPA has initially determined that the proposed revisions will not cause or contribute to a violation of any of the National Ambient Air Quality Standards (NAAQS) and that they meet all applicable EPA regulations and policies.

DATE: Comments must be submitted on or before June 28, 1982.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Media and Energy Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, PA. 19106. ATTN: Ed Shoener (3AW11);
 Pennsylvania Department of Environment Resources, Bureau of Air Quality Control, 200 North 3rd Street, Harrisburg, PA 17120;
 Public Information Reference Unit, Room 2922, EPA Library,

Environmental Protection Agency, 401 M Street SW (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted on or before June 28, 1982 will be considered and should be directed to: Mr. Glenn Hanson, Chief, Pennsylvania Section (3AW11), Air and Waste Management Division, Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, PA. 19106. ATTN: (AH300cPA).

FOR FURTHER INFORMATION CONTACT: Mr. Ed. Shoener, Environmental Protection Agency, Region III, Air Media and Energy Branch, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, PA. 19106; (215) 579-8179.

SUPPLEMENTARY INFORMATION: On July 13, 1981, August 17, 1981, August 26, 1981 and September 4, 1981, the Pennsylvania Department of Environmental Resources submitted revisions to the Pennsylvania SIP. The revisions include Continuous Emission Monitoring (CEM) regulations and procedures, Alternative Opacity Limit (AOL) regulations, emission standards for Volatile Organic Compounds (VOC) based on EPA's Group II Control Technique Guidelines (Group II CTG's), and a request for approval of a generic VOC bubble regulation. The changes will modify 25 PA. Code Chapters 121, 123, 127, 129 and 139. Each of these revisions will be discussed separately below.

Continuous Emission Monitoring

On July 13, 1981 and August 17, 1981, DER submitted regulations, procedures and supporting documentation on Continuous Emission Monitoring (CEM) regulations. The CEM regulations, contained in Chapters 123, 127, 129 and 139 require the installation of CEM equipment on fossil fuel-fired steam generators, fluid bed catalytic cracking catalyst regenerators and sulfuric acid plants as specified by EPA in 40 CFR Part 51, Appendix P. Nitric acid plants are not required to install CEM equipment because there are no nitrogen dioxide nonattainment areas in Pennsylvania. EPA has also reviewed DER's *Continuous Source Monitoring Manual* and finds that the procedures and specifications in the manual satisfy EPA requirements as specified in 40 CFR Part 51, Appendix P and 40 CFR Part 60, Appendix B. Based on its review to date, EPA is proposing to approve DER's CEM regulations and procedures.

Alternative Opacity Limits

On August 17, 1981, DER submitted regulations, contained in Chapter 123, to allow the establishment of Alternative

Opacity Limits (AOL) for sources which comply with all of DER's mass emission standards. Those sources which do not comply with DER's mass emission standards cannot obtain an AOL. In order to qualify for an AOL the DER must also find that the source has, within the bounds of good engineering and economic practice, not discontinued measures to minimize opacity and that the source and associated air pollution control equipment are operated and maintained in a manner to minimize opacity. An AOL will not be established if it would create or contribute to a public nuisance or cause any other type of air pollution.

In order to establish an AOL the source shall be tested under conditions specified by DER. The source shall be tested for compliance with the applicable mass emission standards and existing opacity standards. Only if the source meets the mass emission standards, but fails the opacity test, may an AOL be established. Once an AOL is established the source must operate CEM equipment to monitor compliance or, if CEM equipment will not give representative opacity readings, DER may require a source to:

- Use trained and qualified observers to measure the opacity;
- Monitor and report operating parameters of the process and of air pollution control equipment; and
- Perform such activities on a specified schedule maintaining relevant records for inspection by the Department.

EPA is proposing to approve the AOL regulations because they will not cause or contribute to any violations of the National Ambient Air Quality Standards (NAAQS). In addition, the requirements that the AOL must be established during testing for compliance with the mass emission limitations and that CEM must be used to verify compliance with the AOL, will assure effective enforcement of the mass emission regulations and the AOL.

This proposed approval is not intended to allow DER to establish an AOL for sources subject to opacity limits specified by EPA in any New Source Performance Standard or any EPA issued Prevention of Significant Deterioration (PSD) Permit or any other opacity limit established by EPA for any particular source or categories of sources. If an AOL is desired for any such source, the DER must submit a SIP revision or the source must obtain a modification to its PSD permit, whichever is appropriate.

Group II VOC Regulations

Provisions of the Clean Air Act enacted in 1977 require States to revise their SIP's for areas that have not attained the NAAQS. For States with ozone nonattainment areas, EPA has stated that the minimum acceptable level of ozone control includes Reasonably Available Control Technology (RACT) requirements for sources of VOC emissions for which EPA has published a CTG by January 1978 and additional RACT requirements on an annual basis for VOC sources covered by CTGs published by January of the preceding year. (See 44 FR 20372 (April 4, 1979) as supplemented at 44 FR 38583 (July 2, 1979); 44 FR 50371 (August 28, 1979); 44 FR 53761 (September 17, 1979); 44 FR 67182 (November 23, 1979); and 44 FR 50371 (August 28, 1979)).

EPA published the CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques to provide recommendations on what EPA calls the "presumptive norm" for RACT. Group II CTGs cover the following source categories: (1) Factory Surface Coating of Flatwood Paneling; (2) Petroleum Refinery Fugitive Emissions (Leaks); (3) Synthesized Pharmaceutical Manufacturing; (4) Pneumatic Rubber Tire Manufacturing; (5) Surface Coating of Miscellaneous Metal Parts and Products; (6) Graphic Arts (Printing); (7) Dry Cleaning Perchloroethylene; (8) Gasoline Tank Trucks (Leak Prevention); (9) Petroleum Liquid Storage in External Floating Roof Tanks.

On July 13, 1981, DER submitted to EPA revisions to its SIP which consist of regulations for all of the above categories (incorporated into Chapters 121, 129 and 139) except Factory Surface Coating of Flatwood Paneling. DER certified that there are no Flatwood Paneling Sources in Pennsylvania. On August 17, 1981 and August 26, 1981, DER submitted additional information and documentation concerning these regulations.

EPA has reviewed these regulations and, except for the dry cleaning regulations, finds them approvable. Where variations from EPA's recommended RACT do occur, documentation showing insignificant impact has been submitted by DER.

However, DER's RACT regulation for Perchloroethylene Dry Cleaning is significantly different than that adopted by most other States in that no emission limit is specified. By not specifying an emission limit, add-on control equipment is not required. EPA is

proposing to take no action on this regulation at this time but, will review the effects of this regulation on the emission reductions required in Pennsylvania's 1982 ozone SIP submittal.

Also, while EPA is proposing to approve the petroleum refinery fugitive emissions and the pneumatic rubber tire regulations we are noting minor variations to EPA's recommended RACT for these categories. Specifically, DER's refinery fugitive emissions regulation exempts valves on lines which are one inch or smaller from the requirement to be sealed with a second closure. These exempted valves, however, must still be inspected on a quarterly basis for gas service lines and yearly for liquid service lines.

DER's pneumatic rubber tire regulation allows a source to reduce VOC emissions to 72.9 grams per tire in lieu of complying with the four individual process regulations recommended by EPA. This regulation is, in effect, a bubble regulation and is based on EPA model plant emissions, instead of actual source emissions from the one company in Pennsylvania subject to this regulation. Based on the EPA model plant emissions, DER documented the emissions equivalence of this bubble regulation to the EPA recommended regulations for the four separate processes.

Generic VOC Bubble Regulation

On September 4, 1981, DER requested EPA to approve Chapter 129.53, Alternative Standards Allowing Internal Offsets for Surface Coating and Graphic Arts Facilities, as a generic bubble regulation. If this regulation is approved, individual bubbles adopted under this regulation will not have to be submitted as a SIP revision for EPA approval. Any bubbles adopted under this regulation are subject to the requirement contained in chapter 128 of DER's, which states that all bubbles must satisfy EPA's bubble policy (44 FR 71779) December 11, 1979.

EPA's criteria for reviewing requests for approval of generic bubble regulations can be found in EPA's Emissions Trading Policy Statement (47 Fed. Reg. 15076 (April 7, 1982)). This policy statement constitutes interim criteria for evaluating state emissions trading rules.

The bubble regulation provides that an eligible source may be bound by an alternative set of emission limitations for the emission points at the source, provided that the alternative set of limitations does not result in an increase

in total emissions. That is, the sum of the alternative limitations must equal the sum of the limitations for those points previously imposed by DER's RACT regulations for the surface coating and graphic arts processes. The requirement that the sum of the old RACT limitations equal the sum of the new ones is essentially a straight forward formula which takes the form:

$$E = A_1 \times B_1 + A_2 \times B_2 + \dots A_n \times B_n + C_1 + C_2 \dots C_n$$

Where E = the allowable emissions from the surface coating and/or graphic arts facility in pounds per hour (kilograms per hour);

$A_{1,2,\dots,n}$ = the allowable emission rate for each surface coating process under the RACT regulations;

$B_{1,2,\dots,n}$ = the amount of coating material in gallons per hour (liters per hour), excluding water;

$C_{1,2,\dots,n}$ = the allowable emission rate for each graphic arts process under the RACT regulations.

During EPA's initial review of this formula, EPA asked DER to clarify the use of the "B" term. Initially it was not clear to EPA if this item pertained to the amount of the original coating or the complying coating. DER stated, in its submission of September 4, 1981, that the term "B" represents the amount of coating which is used when the coating is in compliance with RACT regulations for each category. DER enclosed a copy of its guidance document entitled "Reporting Requirements for Surface Coating Operations" dated August 17, 1979, which clarified this point. In the September 4, 1981 submission DER also committed to explicitly clarify this point of ambiguity in the regulation within the next six months.

DER enclosed a copy of its policy requiring public notice to be given in local newspapers to advertise the opportunity for a public hearing on any permit given under this bubble regulation. The DER must specify each alternative limit being proposed as well as the emission limits previously applicable. DER will furnish EPA with a copy of all such public notices. DER must also notify the public and EPA when it grants final approval to alternative limits.

Based on EPA's review to date, EPA is proposing to approve this regulation as a generic bubble. The regulation meets all the criteria specified in the documents listed earlier. If after reviewing any public comments, EPA gives final approval to this generic bubble regulation, EPA will, in effect, be approving in advance any set of

emission limits which satisfies the formula. As a result, when a source's applicable emission limitations are changed by use of a bubble under the Chapter 129.53, EPA, by approving Chapter 129.53, has in effect already approved the alternative emission limitations. Therefore, although EPA, pursuant to the Clean Air Act, Sections 110(a)(2), 110(a)(3), and 110(i) ordinarily reviews individual changes in the applicable requirements of a SIP, in this case it will not be necessary to submit the individual bubbles to EPA as SIP revisions for approval. Any permit issued under Chapter 129.53 will automatically become part of Pennsylvania SIP and, as such, will automatically be federally enforceable.

The public is invited to submit, to the address stated above, comments on whether the proposed changes to the regulations should be approved as a revision of the Pennsylvania State Implementation Plan.

The Administrator's final decision to approve or disapprove the proposed revision will be based on the comments received and on a final determination of whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because this action, if promulgated, only approves State actions and imposes no new requirements.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP revisions, under Section 110 of the Clean Air Act, will not have a significant economic impact on a substantial number of small entities (46 FR 8709). This proposed rule constitutes a SIP revision within the terms of the certification.

List of Subjects in 40 CFR Part 52

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

(42 U.S.C. 7401-642)

Dated: February 8, 1982

Peter N. Bibko,

Regional Administrator.

[FR Doc. 82-14446 Filed 5-26-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 150

[CGD 79-95]

Shipment of Bulk Liquid Hazardous Waste Cargoes by Water

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of Proposed Rule.

SUMMARY: The Coast Guard is withdrawing its proposal for rules governing vessel operators who transport bulk hazardous waste. Under these rules, operators of vessels transporting cargoes of liquid hazardous wastes (vessel transporters) would have been required to have ID numbers, to carry documentation (hazardous waste manifests) for the hazardous waste cargoes, to report cargo spills, and to keep copies of the hazardous waste manifests for three years after the initial date of shipment. The requirements already existed in regulations promulgated by the Environmental Protection Agency (EPA). This proposal was intended to offer more convenience for vessel operators by grouping the requirements for hazardous waste transportation with the other transportation requirements in Title 46. The Coast Guard does not believe whatever benefits operators would get from this rearrangement outweigh the disadvantages of duplicative regulations having potential conflicts with the primary EPA program and the costs of publishing and maintaining the regulations.

FOR FURTHER INFORMATION CONTACT:

Robert M. Query, Office of Merchant Marine Safety (G-MTH/14), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. (202 426-1217).

SUPPLEMENTARY INFORMATION: In the October 14, 1980 issue of the *Federal Register* (45 FR 67708), the Coast Guard Proposed to add requirements for shippers of hazardous wastes in bulk by water. The proposal drew five comments. The comments dealt with crew training, the manner in which the hazardous wastes would be described on the manifests, the definition of "vessel transporter," the definition of "Person in Charge," and whether the requirements would apply to ocean incineration vessels.

After considering the proposal, the Coast Guard has decided to withdraw it. The decision to withdraw the proposal is not an evaluation of the worth of the

requirements but of the worth of repeating them in Title 46 for the convenience of the vessel operator. The decision is based on the following considerations:

(1) The content of the proposal is already required by EPA in 40 CFR Part 263. Coast Guard regulations would be at best duplications and could lead to conflicts. The statute places the primary responsibility for implementing, administering, and enforcing the program on the EPA. In its early developmental stages, this program is bound to undergo numerous, continuous changes keeping up with the changes will be difficult. Unavoidable delays in processing and publishing the concomitant Coast Guard amendments will create conflicts. Moreover, there is always the possibility of inadvertent conflicts in highly complex rules. The negative experience of other agencies in similar situations, sometimes resulting in opposite and totally irreconcilable requirements, makes it preferable to leave the rulemaking process, at least for the time being, to the lead agency. However, should the Coast Guard detect any violations of EPA regulations, it will promptly report them to EPA. Vessel operators handling hazardous waste cargoes should continue to refer to Title 40 for EPA requirements applying to such shipments.

(2) Water shipments of bulk hazardous wastes fall under the existing Coast Guard rules for shipping bulk hazardous materials, so that Title 46 already contains minimum standards for vessel design and cargo handling procedures.

(3) In addition the rule would have added to the recordkeeping and reporting burdens placed on the public and consumed Coast Guard resources in maintaining the rule current, enforcing the requirements, and processing violations.

For these reasons the Coast Guard does not consider the benefits to the ship or barge operator, from having hazardous waste shipping requirements placed with the other shipping requirements in Title 46, to outweigh the disadvantages.

(46 U.S.C. 391a; 49 U.S.C. 1803; 49 CFR 1.46(n)(4) and (t))

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

May 17, 1982.

[FR Doc. 82-14486 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS
COMMISSION

47 CFR Part 73

[BC Docket No. 82-74; RM-4008]

FM Broadcast Station Fort Smith,
Arkansas, and Poteau, Oklahoma;
Changes Made in Table of
AssignmentsAGENCY: Federal Communications
Commission.

ACTION: Dismissal of proposed rule.

SUMMARY: This action dismisses a proposal to reassign FM Channel 250 from Poteau, Oklahoma, to Ft. Smith, Arkansas, and to reassign Channel 265A from Ft. Smith to Poteau, and to modify the respective licenses to specify the new channel. The Ft. Smith petition requested dismissal in order to avoid competing with another party interested in the new Ft. Smith channel.

DATES:

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

FOR FURTHER INFORMATION CONTACT:
Mark Lipp, Broadcast Bureau (202) 632-
7732.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

In the matter of amendment of
§ 73.202(b), Table of Assignments, FM
Broadcast Stations. (Fort Smith,
Arkansas, and Poteau, Oklahoma); BC
Docket No. 82-74 RM-4008; report and
order (Proceeding Terminated).

Adopted: May 12, 1982.

Released: May 20, 1982.

By the Chief, Policy and Rules Division.

1. The Commission has under
consideration the Notice of Proposed
Rule Making, 47 FR 7463, published
February 19, 1982, proposing to reassign
Channel 250 from Poteau, Oklahoma, to
Fort Smith, Arkansas, and to reassign
Channel 265A from Ft. Smith to Poteau.
It was also proposed to modify the
existing licenses for the respective
channel to specify the new assignments.
Timely comments were received from
the joint petitioners—Collins
Broadcasting Corp. ("Collins"), licensee
of Station KLUP(FM), Poteau, and
Hernreich Community Broadcasting, Inc.
("Hernreich"), licensee of Station
KXXI(FM), Fort Smith; from WAKP
Associates¹ and from Richard C.

¹WAKP Associates expressed an interest in a
new channel assignment to Tahlequah, Oklahoma,
should the exchange of channels under
consideration here take place. In view of the

Enderwood. Late filed comments were
submitted by Miles C. Zimmerman; and
by Jere Dean Fisher. Petitioners have
filed a motion to strike the comments of
Zimmerman, Fisher and Enderwood. In
addition, Hernreich has submitted a
"Petition for Investigation Re Strike
Pleading and Abuse of Process"
regarding the Enderwood comments.
Hernreich has attached to that petition
Affidavits of Robert Hernreich, of
William McPetridge, and of Nancy M.
Hernreich. Enderwood has filed
comments in response to this petition
and Hernreich has filed a reply.²

2. Ft. Smith (1980 population 71,384),³
seat of Sebastian County (1980
population 94,930), is located on the
Arkansas-Oklahoma border
approximately 200 kilometers (125 miles)
west of Little Rock, Arkansas. It is
served by four AM Stations (KFPW,
KFSA, KWHN, and KTCS) and four FM
stations (KISR (Channel 229); KMG
(Channel 256); KTCS-FM (Channel 260)
and KXXI (Channel 265A)).

3. Poteau (1970 population 5,500), the
seat of LeFlore County (1970 population
32,137), is located approximately 264
kilometers (165 miles) east of Oklahoma
City, Oklahoma. It is served by AM
Station KLCO and by two FM stations
(KINB (Channel 297) and KLUP
(Channel 250)).

4. The Notice proposed to exchange
channels between Ft. Smith and Poteau
for the benefit of both communities.⁴

disposition of this proceeding, that proposal has not
been accepted for consideration.

²In an even later reply pleading, Hernreich
suggests that the Commission should conditionally
grant the modification of license pending the
outcome of the investigation it has requested citing
§ 73.3592(a)(1) of the Commission's Rules. However,
as explained in paragraph 10, we have denied the
request for an investigation on the legitimacy of
Enderwood's interest. Thus, a conditional grant
would not be appropriate. Hernreich also requests
as an alternative that we reassign only Channel
265A from Ft. Smith to Poteau and designate for
hearing only Hernreich and Enderwood on Channel
250 at Ft. Smith. Hernreich cites no authority for this
extraordinary request. We do not believe that we
could, consistent with Ashbacker, assign a new
channel and limit the acceptance of applications
only to the parties that expressed an interest in the
rule making. We have found no precedent for such
action. All new assignments have been available for
any interested and qualified applicant regardless of
its participation in the rule making. See, *Zenith
Radio v. F.C.C.*, 211 F.2d 629 (D.C. Cir. 1954).

³Population data are taken from the 1970 and 1980
U.S. Censuses.

⁴Collins recites that it has encountered serious
financial problems in operating a Class C station in
Poteau and desires to revert to a Class A operation.
Under the proposal, the existing Class C signal of its
station (KLUP) would be replaced by Station KXXI,
licensed to Ft. Smith. This replacement would take
place by Hernreich's use of the current transmitter
of Station KLUP which now provides city grade
service over Ft. Smith and fully encompasses the
present Class A signal of Station KXXI in and
around Ft. Smith. Thus, no listeners of Station KXXI
would lose that station's signal by virtue of the

Under this plan, Station KLUP would
convert from Channel 250 to Channel
265A and Station KXXI would switch
from Channel 265A to Channel 250.
Under the Cheyenne⁵ policy, the
modifications could only take place if no
other interest were expressed in
applying for Channel 250 at Ft. Smith or
for Channel 265A at Poteau.

5. In response to the Notice, interests
in the proposed Ft. Smith Class C
channel were expressed by Enderwood
and by Zimmerman. Also, an interest in
the proposed Class A Poteau assignment
was announced by Fisher.⁶ The thrust of
Hernreich's reply comments is that each
of these interests are invalid and should
be stricken from the record. In addition,
Hernreich requests that the participation
of Enderwood in this proceeding should
be investigated by the Commission as
an abuse of the Commission's processes.

6. First, we will deal with the
comments of Zimmerman and Fisher. In
both cases the filings were received late
and do not include a certificate of
service. The failure to serve the letters
on the petitioner constitutes an *ex parte*
presentation. Section 1.1201(f) and (g) of
the Commission's Rules. Such
presentations are prohibited and
improper for Commission consideration.
Section 1.1229 and paragraph 12 of the
Notice and paragraph 4 of the Appendix
in this proceeding. See, *Ex Parte
Communications During Informal Rule
Making Proceedings*, 78 F.C.C. 2d 1384,
1396-1397 (1980). See, also, *Smith's
Grove, Kentucky, et al.*, 47 FR 10601,
published March 11, 1982. As for the
untimeliness of the comments of
Zimmerman and Fisher, we view that
deficiency as equally serious. We have
set deadlines or "cut off" dates for the
filing of conflicting proposals. Section
1.420(d) and paragraph 4 of the
Appendix to the Notice. While the
expressions of interest in the proposed
new channel assignments are not
strictly counterproposals in the usual
sense, we view the interest as in conflict
with the proposed modification of
licenses. We have said in this regard
that "the orderly conduct of the
Commission's business requires that at

switch. In addition, all listeners of Station KLUP
will receive a replacement signal. Finally, the
residents of Poteau would continue to receive two
local FM stations from Collins' use of Channel 265A
for its station. An additional benefit to Ft. Smith
was said to be the elimination of intermixture of
channels there.

⁵*Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

⁶In a later letter, Fisher also expressed a desire to
operate on Channel 250, apparently in Poteau.
Hernreich filed a reply to this letter. We have not
given consideration to either pleading due to the
lateness and to its lack of relevance to the
disposition of this proceeding.

some point in the consideration of a group of proposals, requests which conflict with them must be barred from consideration until decision upon the earlier proposals is reached." See, *Greenville, Kentucky et. al.* (Notice of Proposed Rule Making), 35 FR 16983, 16985 (1970). The purpose of setting these deadlines are the same as for an application for a construction permit. As in the processing of applications there is a need for certainty and a point at which the number of interests entitled to consideration must be set. The date we have determined for this purpose is the comment deadline. Here there has been no explanation offered for the late filings nor do we have an indication as to the failure to serve. Thus we find the comments of Zimmerman and Fisher unacceptable.

7. The comments of Enderwood present a different problem. These comments were filed in a timely fashion and contain a certificate of service. Hernreich raises no such procedural grounds for striking the pleading. Rather, petitioner has questioned Enderwood's motives in opposing the the subject request. Enderwood has opposed the transfer of Channel 250 to Ft. Smith because he believes that Station KLUP presently provides programming particularly suited to the rural nature of the area. On the other hand, Enderwood asserts that the programming of Station KXXI would be geared to Ft. Smith's needs and deprive the Oklahoma listeners of their present service. Notwithstanding this opposition to an additional Class C assignment at Ft. Smith, Enderwood states that he wishes to apply for the channel, if assigned.

8. In its motion to strike, Hernreich alleges that the comments of Enderwood were submitted as a "strike" pleading, motivated by vengeance and intended to perpetuate a fraud. Accordingly, Hernreich urges the Commission to conduct an investigation into the circumstances surrounding the submission of Enderwood's pleading. Briefly, the recitation of events includes the former employment relationship between Hernreich and Enderwood which terminated on less than amicable terms and the subsequent employment relationship of Enderwood with a competitor in the Ft. Smith market which could benefit from the dismissal of this proposal.

9. The main issue in this case is whether, in view of the filing by Enderwood of an expression of interest in the proposed Ft. Smith Class C assignment, the modification of the license for Station KXXI can take place. We must hold that it cannot. Hernreich

has gone to great length (including three affidavits) in trying to demonstrate that Enderwood's filing has no other purpose than to impede, obstruct or delay this proceeding. It requests the commencement of an investigation citing authority in § 1.1 of the Commission's Rules. Due to the limitations inherent in a rule making proceeding, the legitimacy of Enderwood's interest cannot be adequately resolved without a full evidentiary hearing as Hernreich seems to recognize. Such a hearing could take place by our assigning the Class C channel to Ft. Smith and accepting applications therefor. Hernreich could then raise allegations concerning the *bona fides* of Enderwood as an applicant. Yet Hernreich does not wish to have us proceed in that fashion. Instead, it desires a modification of its license to the new channel without the risk of a comparative hearing. We cannot comply with that request under existing law. See, *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945). In the alternative, Hernreich has asked that rather than permit the filing of applications on Channel 250, we dismiss the proceeding without action. Since we would not reassign Channel 250 from Poteau to Ft. Smith where, in doing so, a licensee stands to lose its station, we will permit Hernreich and Collins to withdraw from this proceeding without any action on their request. See, *Bonita Springs, Florida, (First Report and Order)* 45 R.R. 2d 1585 (1979), and *Statesboro, Georgia*, 40 R.R. 2d 1021 (1977).

10. As for undertaking an investigation prior to resolving the rule making under the authority of § 1.1 of the Commission's Rules, such action is discretionary. Our view is that the allocation of the Commission's limited resources in this venture would not be of sufficient benefit. The good faith intentions of a prospective applicant are generally assumed in a rule making proceeding. The *Cheyenne* procedure utilized here is designed to shortcut the *Ashbacker* requirement of allowing an opportunity to file an application for each new assignment. The *Cheyenne* case held that the opportunity for other expressions of interest can be given through the comment period in a rule making proceeding. Otherwise, in every such case the new assignment would have to be opened up for the filing of applications. Since most station owners would not risk losing their license in order to improve their facility, the alternative of withdrawing their proposal is given, if another interest is expressed. The general absence of this

tactic in cases decided since the *Cheyenne* decision in 1976 demonstrates the effectiveness of this procedure so far. Were a petitioner permitted to raise a question regarding the legitimacy of another interest each time, the *Cheyenne* procedure could not be maintained. That is why the alternative of pursuing such matters at the application stage is offered. Thus we expect that when a station wishes to utilize the *Cheyenne* procedure in an attempt to minimize its risk, it will do so with knowledge that application matters, i.e., an applicant's qualifications, may not be resolved in the rule making proceeding.

11. Furthermore, even if an investigation were to take place under Section 403 of the Commission's rules, Enderwood's qualifications as an applicant for Channel 250 at Ft. Smith could not be resolved. Only a hearing could accomplish Hernreich's objectives. However, a hearing could not be limited to Hernreich and Enderwood since under the *Ashbacker* decision, the channel would be open to competitive applications. Hernreich does not wish to take this risk as has been discussed previously. Accordingly, the commencement of an investigation, in and of itself, could not resolve Hernreich's request for modification either on a conditional (under § 75.3592) or unconditional basis.

12. In view of the above, it is ordered that the petition of Hernreich Community Broadcasting, Inc. and Collins Broadcasting Corporation is dismissed.

13. It is further ordered that this proceeding is terminated.

14. For further information concerning the above, contact Mark N. Lipp, Broadcast Bureau, 632-7792.

(Secs. 4, 303, 48 stat., as amended, 1066, 1982; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,
Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-14336 Filed 5-26-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Subtitle A

[Notice No. 82-5]

Review of Rules Implementing Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of regulatory review and request of comments.

SUMMARY: As part of the Department of Transportation's continuing program of reviewing existing regulations, the Department is examining its rules that implement Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin in programs receiving financial assistance. The purpose of this review is to recommend ways of carrying out statutory responsibilities as efficiently and effectively as possible, with minimum burdens on recipients and the public. This notice sets forth some of the alternatives the Department is considering, asks questions on matters about which the Department seeks information, and requests comments from the public.

COMMENT CLOSING DATE: In order to receive full consideration, comments should be received by June 28, 1982.

ADDRESS: Comments should be sent to Docket Clerk, Room 10421, Department of Transportation, 400 7th St., SW., Washington, D.C. 20590. Comments will be available for public inspection between 9:00 a.m. and 5:00 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Shirley Lloyd, Office of Civil Rights, Department of Transportation, Room 9201, 400 7th St. SW., Washington, D.C. 20590, Telephone 202-426-4754.

SUPPLEMENTARY INFORMATION:

Title VI

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*) provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This statute is supplemented in major Department of Transportation (DOT) financial assistance programs by program-specific statutes which repeat this prohibition and extend coverage to discrimination on the basis of sex, and other bases. These statutes include 23 U.S.C. 324 (highway and traffic safety programs), 49 U.S.C. 1730 (airport aid program), 49 U.S.C. 1615 (urban mass transit program), and section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 (rail programs).

The principal DOT Title VI regulation is 49 CFR Part 21, which has not been revised since 1970. In addition, various DOT operating administrations (e.g., Federal Highway Administration, Federal Aviation Administration) have

separate regulations implementing the DOT regulation or the individual program statutes.

The Regulatory Review Process

When a regulatory program has existed for some period of time, administrative practices, substantive requirements, and paperwork burdens become solidly established as parts of an agency's methods for carrying out a statute or policy. The purpose of a regulatory review is to ask what is required in today's circumstances to achieve the statutory or policy objective. The agency must consider alternatives for carrying out its statutory responsibilities and decide among the alternatives on the basis of effectiveness, administrative efficiency, costs and burdens imposed on parties outside the government, and the maximization of net benefits to society.

The Department is committed to ensuring that there not be discrimination on any of the forbidden grounds in its financial assistance programs. This review does not in any way diminish the strength of this commitment, but rather, is intended to determine the best means for carrying it out.

One important part of the regulatory review process is this request for public participation. It is important to know what the public thinks about the alternatives under consideration. Framing alternatives need not be constrained by existing practices, regulations, or requirements. Even if an agency outside DOT would also have to make changes (e.g., if the Department of Justice would have to change its Title VI guidelines in order to permit DOT to change some provision of its regulation), it is worthwhile to make the suggestion.

Following its consideration of alternatives in light of the comments, the Department will adopt recommendations for its Title VI regulatory program. These recommendations will form the basis of a notice of proposed rulemaking that will be made available for public comment at a later date. Other important DOT Civil Rights rules are also undergoing review or revision at this time, such as the Department's rule to implement section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the ground of handicap) and the Department's minority business enterprise rule. These reviews are separate from this review of Title VI, and we are not seeking comments about them in this notice.

Some Questions

We request your views on any or all of the following questions. In

commenting on these questions, please include examples from your own experience, where possible.

1. Have existing requirements (and if so, which ones?) effectively prevented or corrected discriminatory practices? In particular, have review and reporting requirements and practices been successful in identifying discriminatory practices?

2. Are there areas in DOT-assisted programs in which discrimination is more prevalent today than in others? Are there particular programs or projects in which Title VI problems and complaints are likely or unlikely to arise? Are there types of noncompliance which the present rules do not control successfully which the Department could address through regulatory changes?

3. Administratively, is it easier for recipients to respond to broad, general requirements or to more specific requirements? Which approach is more effective in achieving the objectives of the statute? Why?

4. What are the quantifiable and non-quantifiable benefits of the existing scheme?

5. What resources in terms of time, money, and personnel are needed to comply with existing federal non-discrimination requirements in assisted programs? Are there particular parts of the existing requirements that could be changed to save substantial portions of these resources?

6. Are there problems concerning the relationship of primary recipients (e.g., states) and subrecipients (e.g., counties to which states pass through DOT funds) that the Department could ease through regulatory change?

7. Is there overlap or duplication among various DOT efforts to enforce nondiscrimination requirements (e.g., between the basic DOT Title VI program and operating administration enforcement of program-specific civil rights statutes)? Is there overlap or duplication among DOT efforts to enforce nondiscrimination requirements and those of other Federal, state or local agencies? If so, how can DOT or other agencies mitigate the problems?

8. Are there discriminatory practices which current efforts cannot identify? If so, how can DOT remedy this deficiency?

9. Is there a need for DOT to expand technical assistance and/or training provided to recipients? Is there a need for such assistance at all?

Alternatives Under Preliminary Consideration

The Department is considering a series of alternatives or suggestions in various areas of Title VI regulation and practice. We invite your comments on them. Many of these alternatives are not mutually exclusive, and might be used in combination with one another. If you think of some alternatives that haven't occurred to us, please tell us about them. The following alternatives are being considered:

A. General Program Considerations. Presently, the Department of Justice (DOJ) issues a Title VI regulation which is applicable to all Federal departments and agencies. This regulation is then implemented by DOT. Finally, each operating administration implements the Departmental regulation.

Alternatives

1. Publish one regulation applicable to all operating administrations within DOT.

2. Eliminate the DOT regulation and authorize each operating element to issue its own regulations.

3. Maintain the current system.

B. Program Specific Statutes. In addition to the Title VI general prohibition against discrimination on the basis of race, color and national origin, several DOT administrations are covered by program-specific statutes that relate only to that administration. All of these specific statutes cover sex discrimination; however, they vary in their coverage of MBE, employment, and age discrimination.

Alternatives

1. Treat each program-specific statute separately.

2. Apply Title VI procedures to all program-specific statutes.

3. Apply Title VI procedures to all program-specific statutes with similar coverage and treat individual differences separately.

C. Pre-Award Compliance Reviews. Typically, DOT requires a finding of compliance with Title VI and similar statutes before DOT funds may be committed to a program or project. The mechanisms vary among different DOT financial assistance programs, but often involve detailed review by a DOT operating administration of a recipient's activities and plans.

Alternatives

1. Eliminate all pre-award reviews. DOT could either assume compliance in the absence of complaints or information to the contrary, or could require an assurance or certification of compliance by the recipient.

2. Establish a system of thresholds for pre-award review focusing on the size and resources of recipients. That is, retain pre-award reviews for larger recipients but eliminate them for smaller recipients. If we adopted such a system, what should the criteria be for inclusion in the "larger recipient" or "smaller recipient" category? (There might be more than two categories.)

3. Have pre-award reviews for all recipients, but establish a variation of the threshold system for the content of the reviews. That is, reviews for smaller recipients would be less intensive, time-consuming, burdensome, etc. than for larger recipients. If the Department established such a system, what should the substantive differences be between the requirements for larger and smaller recipients?

4. Allow recipients to submit reviews/reports done under state requirements after DOT determination that those requirements are sufficient to meet DOT needs.

5. Retain pre-award reviews for major projects, projects with potentially high Title VI impacts, or projects operated by "problem" recipients (i.e., recipients who have had numerous Title VI compliance problems), and eliminate pre-award reviews for other recipients. If the Department adopted this approach, how should the Department decide whether a project is a "major" or "high-impact" project or whether a recipient is a "problem" recipient?

6. Conversely, eliminate pre-award reviews only for those recipients with particularly good records and for minor projects or projects with negligible Title VI impact, while retaining reviews elsewhere. Again, how should the Department decide what projects or recipients to put in those categories?

7. Require pre-award reviews for all project and grant approvals.

8. Regardless of the approach chosen, apply the same pre-award review process in all elements of DOT.

9. Regardless of the approach chosen, apply different pre-award review processes depending on the operating administration providing the financial assistance.

D. Post-Award Compliance Reviews. Often, DOT operating administrations review the Title VI compliance status of recipients after a grant or project has been approved, either through a review of available paperwork or an on-site investigation. The subject of a post-award review is often broader than that of a pre-award review. The latter usually focuses on a specific project; the former often looks at an agency's administration of an entire program,

though it can look at a particular project as well.

Alternatives

1. Eliminate all post-award reviews. If DOT took this approach, it could rely on pre-award reviews or simply on complaints as a means of determining noncompliance.

2. Have post-award reviews only for problem recipients, major projects, or high-impact projects; alternatively, excuse from post-award reviews recipients with good records, minor projects, or projects with negligible Title VI impacts. The same questions raised in items (5) and (6) of C above pertain.

3. Concentrate post-award reviews in areas where frequent complaints arise or where large sums of DOT financial assistance are involved. This alternative could easily fit into a threshold approach for deciding when and on whom to perform compliance reviews.

4. Permit recipients to establish their own internal processes for ensuring Title VI compliance. If DOT looks at a recipient's process and approves it, then DOT would not have to perform post-award compliance reviews concerning the recipient. This alternative might also be made to apply to pre-award reviews.

5. Retain post-award or general compliance reviews for all recipients, and establish a schedule to ensure that all would be reviewed periodically. The schedule could call for more frequent reviews for larger recipients or problem recipients.

6. Regardless of the approach chosen, apply the same post-award review process for all operating administrations of DOT.

E. Complaint Processing. Anyone may file a complaint with DOT alleging that a recipient is failing to comply with Title VI. An important question DOT must answer is how to best process these complaints fairly, expeditiously, and effectively.

Alternatives

1. Send all complaints to central DOT Office of Civil Rights (in the Office of the Secretary). The Office of Civil Rights would keep major complaints and return the rest to the operating administrations for resolution. If the Department adopts this approach, what guidelines should the Department use to decide what complaints fall into each category?

2. Decentralize complaints, by leaving processing to operating administrations (and, in particular, to their field offices). The operating administrations would send major complaints to the central DOT Office of Civil Rights. Again, what criteria should be used to determine if a

complaint is important enough to be sent to the Office of Civil Rights for resolution?

3. Handle all complaints in the central Office of Civil Rights, regardless of size and importance.

4. Handle all complaints in the operating administrations and their field offices, regardless of size and importance.

5. Have operating administrations and their field offices make factual investigations and recommendations for disposition, which are transmitted to central Office of Civil Rights for decision.

In responding to these suggestions and questions, please comment about the likely costs and benefits of various courses of action as well as about the general effectiveness of the alternatives.

The Department will take all comments carefully into account during this review and respond to major issues in the preamble of any notice of proposed rulemaking that results from this review.

Issued in Washington, D.C. on May 19, 1982.

Wesley A. Plummer,
Director, Office of Civil Rights.

[FR Doc 82-14212 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-62-M

Notices

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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Level for Certain Wool Apparel Products From Colombia

May 24, 1982.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing by the application of swing and carryover the level of restraint for women's, girls', and infants' wool suits in Category 444, produced or manufactured in Colombia and exported during the twelve-month period which began on July 1, 1981, from 4,345 dozen to 5,040 dozen.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48963), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), May 5, 1981 (46 FR 25121), and May 13, 1982 (47 FR 20654)).

SUMMARY: The Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia, provides for the carryover of the shortfalls in certain categories from the previous agreement year (carryover) and for percentage increases in certain specific category ceilings during an agreement year (swing).

EFFECTIVE DATE: May 24, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On July 1, 1981, there was published in the

Federal Register (46 FR 34361) a letter dated June 29, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established import restraint levels for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 444, produced or manufactured in Colombia and exported to the United States during the twelve-month period which began on July 1, 1981. In accordance with the terms of the bilateral agreement, as amended, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in the letter published below, to increase the previously established level of restraint for Category 444 to 5,040 dozen.

Paul T. O'Day

Chairman, Committee for the Implementation of Textile Agreements.

*Commissioner of Customs,
Department of the Treasury, Washington,
D.C.*

May 24, 1982.

Dear Mr. Commissioner: On June 29, 1981, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption, during the twelve-month period beginning on July 1, 1981 and extending through June 30, 1982 of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in Colombia, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹

Effective on May 24, 1982, paragraph 1 of the directive of June 29, 1981 is amended to increase the twelve-month level of restraint established for wool textile products in Category 444 to 5,040 dozen.²

¹ The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia, which provide in part, that: (1) within the applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may also be increased for carryover up to 11 percent of the applicable category limit in the final agreement year; (3) certain consultation levels may be increased within the applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

² The level of restraint has not been adjusted to reflect any imports after June 30, 1981.

Federal Register

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Thursday, May 27, 1982

The action taken with respect to the Government of Columbia and with respect to imports of wool textile products from Columbia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 14479 Filed 5-26-82; 8:45 am]

BILLING CODE 3510-25-M

CONSUMER PRODUCT SAFETY COMMISSION

Ford Manufacturing Co., Inc.

[CPSC Docket No. 82-2]

Publication of Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under Provisions of its Rules of Practice for adjudicative Proceedings (16 CFR 1025, 45 FR 29206), the Consumer Product Safety Commission must publish in the *Federal Register* Complaints which it issues under the Consumer Product Safety Act. Printed below is a Complaint in the matter of Ford Manufacturing Company Incorporated.

Dated: May 24, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

SUPPLEMENTARY INFORMATION:

In the Matter of Ford Manufacturing Company, Incorporated, a corporation.

Complaint

Nature of the Proceeding

1. This is an adjudicative proceeding under the Rule of Practice for Adjudicative proceedings before the Consumer Product Safety Commission (hereinafter, the "Commission"), 16 CFR Part 1025, for the assessment of civil penalties pursuant to section 20 of the Consumer Product Safety Act

(hereinafter, "CPSA") for failure to comply with the CB Base Station Antennas, T.V. Antennas, and Supporting Structures Rule (hereinafter, the "CB Antenna Rule"), 16 CFR Part 1402, in violation of section 19(a)(9) of the CPSA, 15 U.S.C. 2068(a)(9) for failure to provide information required by the CPSA and the CB Antenna Rule, in violation of section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3), and for failure to comply with the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) and the rules thereunder, 16 CFR Part 1115, in violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

Jurisdiction

2. The Commission has jurisdiction over the subject matter of this adjudicative proceeding pursuant to sections 15(b), 19(a)(3), 19(a)(4), 19(a)(9), 20 and 27(a) of the CPSA, 15 U.S.C. 2064(b), 2068(a)(3), 2068(a)(4), 2068(a)(9), 2069 and 2076(a).

Respondent

3. Respondent, Ford Manufacturing Company, Incorporated (hereinafter, "Ford") is a corporation organized and existing under the laws of the State of Texas with its principal office located at 624 Texas Central Parkway, Waco, Texas 76701. Ford is a manufacturer within the meaning of section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4).

The Consumer Product

4. CB Antennas manufactured or distributed for sale or sold to consumers are consumer products within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. CB Antennas manufactured or distributed for sale or sold after September 26, 1978, are subject to the requirements of the CB Antenna rule, 16 CFR Part 1402, issued by the Commission under section 27(e) of the CPSA, 15 U.S.C. 2076(e).

The Rule

6. The CB Antenna Rule requires manufacturers of CB antennas to attach to the antenna a designated label in specified colors, 16 CFR 1402.4(a)(1)(i) (A), (B), (C), (D) and (E) (1) and (2), to warn of the damage of electrocution.

7. The CB Antenna Rule requires manufacturers of CB antennas to include with each antenna a specific warning on the first page at the beginning of the body of the instructions: WARNING: INSTALLATION OF THIS PRODUCT NEAR POWERLINES IS DANGEROUS. FOR YOUR SAFETY, FOLLOW THE INSTALLATION DIRECTIONS. 16 CFR 1402.4(a)(1)(ii)(A).

8. The CB Antenna Rule requires that specific information be included as part of the instructions. This information must be conspicuously identified as containing information concerning contact with powerlines. 16 CFR 1402.4(a)(1)(ii)(B)(1), (2), and (3)(i), (ii), (iii).

9. The CB Antenna Rule required manufacturers of CB antennas to submit to the Commission samples of all labels, warning statements, or instructions, or if a new product is introduced, to submit such labels, warning statements, and instructions within 30 days after the change or introduction. 16 CFR 1402.4(b)(1).

Violations

10. On or about June 12, 1980, two boys died when an unlabeled CB Antenna which had been manufactured and sold by Ford after September 26, 1978, and which lacked the required warning statements and installation instructions, came in contact with powerlines.

11. On or about July 23, 1980, the Atlanta Regional Office (hereinafter, "Atlanta") obtained from the D.A. Cooper Furniture Store an unlabeled CB Antenna manufactured and sold by Ford after September 26, 1978, which lacked the required warning statements and installation instructions.

12. On or about July 23, 1980, the Dallas Regional Office (hereinafter, "Dallas") obtained from Ford two unlabeled CB Antennas, which had been manufactured and sold by Ford after September 26, 1978, which lacked the required warning statements and installation instructions.

13. On or about July 23, 1980, Dallas obtained from Ford two unlabeled CB Antennas from a total of six code-dated unlabeled units, which had been manufactured and sold by Ford after September 26, 1978, and which lacked the required warning statements and installation instructions.

14. On or about July 30, 1980, Dallas sampled two unlabeled CB Antennas from a total of six code-dated unlabeled units, which had been manufactured and sold by Ford after September 25, 1978, and which lacked the required warning statements and installation instructions.

15. To date, Ford has not submitted samples of all labels, warning statements, and instructions for its CB Antenna.

16. Ford did not report under section 15(b) of the CPSA, 15 U.S.C. 2065(b) until on or about August 5, 1980.

17. The manufacture or distribution of CB Antennas by Ford after September 26, 1978, as alleged in paragraphs 11 through 14 which fail to comply with the

CB Antenna Rule is a prohibited act within the meaning of section 19(a)(9) of the CPSA, 15 U.S.C. 2068(a)(9), with respect to each antenna involved.

18. The failure to submit samples of all labels, warning statements, and instructions as alleged in paragraph 15, is a failure beginning on October 28, 1978 to comply with the CB Antenna Rule and is a prohibited act within the meaning of sections 19(a)(3) and (9) of the CPSA, 15 U.S.C. 2068(a)(3) and (9).

19. Ford's failure to inform the Commission that noncomplying CB Antennas which could create a substantial product hazard, had been manufactured and distributed after September 26, 1978, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), and as that section is interpreted in 16 CFR Part 1115, is a separate violation and offense under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), with respect to each antenna involved.

20. Ford's knowing violations of the requirements of the CPSA as alleged in paragraphs 17, 18 and 19, are subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

Relief Sought

Wherefore, after reviewing the facts in this matter in light of the statutory criteria specified in section 20(b) of the CPSA, 15 U.S.C. 2069(b), the staff of the Consumer Product Safety Commission believes that the following relief is in the public interest and requests that the Commission:

1. Determine that a civil penalty should be assessed against the Ford Manufacturing Company, Incorporated;

2. Assess a civil penalty of \$50,000, although a higher amount is authorized by statute; and

3. Impose a civil penalty pursuant to section 20 of the CPSA, 15 U.S.C. 2069.

Dated: May 14, 1982.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, D.C. 20207, Telephone (301) 492-6621.

In the Matter of Ford Manufacturing Company, Incorporated, a corporation.

List and Summary of Documentary Evidence

1. In depth investigation report of June 12, 1980, into the deaths of two teenagers, includes follow-up inspections and sample E 810-9825 (model S 184).

2. Inspection report of July 14, 1980, of a distributor of Ford Manufacturing

Company's (Ford) citizen band base station antenna (CB antenna).

3. Inspection report of July 22-23, 1980, of Ford includes sample E-855-0850 (one model F-184 and one model S-184 from a lot of six models code-dated after September 26, 1978).

4. Letter from Ford dated August 5, 1980, to the Commission's Dallas Office reporting the possible sale of non-complying CB antenna.

5. Inspection report of July 30, 1980, includes sample E 855-0635 (2 units of the F-184 antenna from a lot of six units shipped by Ford on February 21, 1980).

6. Sample Collection report dated August 12, 1981, containing documentation for sample E 810-9825 and sample E 810-0703, includes affidavits from consumer, retailer, and distributor.

[FR Doc. 82-14480 Filed 5-26-82; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 82-1]

Roper Corporation, a Corporation, and Sears Roebuck and Company, a Corporation; Preliminary Conference; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of prehearing conference.

DATE: This notice announces a prehearing conference in the matter of Roper Corporation, a corporation, and Sears, Roebuck and Company, a corporation, on June 7, 1982 at 10:00 a.m.

ADDRESS: The prehearing conference will be held in the Parklawn Building, Room 4A-35, 5600 Fishers Lane, Rockville, MD 20857. For additional information contact: Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6800.

Notice of Prehearing Conference

Please take notice that a prehearing conference in this proceeding will be held on June 7, 1982 at 10:00 a.m. in the Parklawn Building, Room 4A-35, 5600 Fishers Lane, Rockville, MD 20857 before Administrative Law Judge Daniel J. Davidson and that the conference will consider the scheduling of a hearing on the remedies necessary to protect the public (said hearing will consider, *inter alia*, the issue of whether the Commission under section 20(c) of the Act is authorized to assess a civil penalty).

Dated: May 24, 1982.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 82-14481 Filed 5-26-82; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Application on Behalf of Army Transport Command Civilian Personnel During World War II

Under the provisions of Section 401 of Pub. L. 95-202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Army Transport Command Civilian Personnel During World War II. Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, D.C. 20330. For further information contact Technical Sergeant Stephen J. Koegle, USAF, Telephone No. 694-5380.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-14094 Filed 5-26-82; 8:45 am]

BILLING CODE 3901-01-M

USAF Scientific Advisory Board; Meeting

May 20, 1982.

The USAF Scientific Advisory Board Ad Hoc Committee on Modeling Techniques to Predict the Impact of Chemical Warfare (CW) Agents will meet at Wright-Patterson Air Force Base, Ohio on June 29 and 30 9:00 a.m. to 5:00 p.m. and on July 1, 1982 from 9:00 a.m. to 12:00 p.m.

The Committee will receive classified informational briefings to define the inputs needed for predictive modeling of CW scenarios at different levels of conflict; identify any new modeling technologies, and outline the R&D needed (if any). The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-14457 Filed 5-26-82; 8:45 am]

BILLING CODE 3901-01-M

USAF Scientific Advisory Board; Meeting

May 20, 1982.

The USAF Scientific Advisory Board Ad Hoc Committee on Advanced Electronics will meet at the Naval Postgraduate School, Monterey, California from August 9-20, 1982. The purpose of the meeting will be to review and make recommendations on the alternatives for application of advancing electronics technology in aircraft avionics and systems. The meetings will convene at 8:00 a.m. each day and adjourn at approximately 4:30 p.m. each day. The briefings will be classified and closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-14458 Filed 5-26-82; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors,

United States Military Academy

Dates of Meeting: July 28-30, 1982.

Place of Meeting: West Point, New York

Time: At West Point:

1300-1700, July 28, Optional orientation for

new Board members (West Point)

0830-1145, July 29, Observe Cadet Basic

Training (West Point)

1145-1645, July 29, Observe Cadet Field

Training (Camp Buckner)

0830-1245, July 30, Board Discussions (Lee Hall)

1400-1600, July 30, Tour of USMA Facilities (USMA and Ladycliff College)

Proposed Agenda: Inquire about cadet training to include Cadet Basic Training and Cadet Field Training, preparation of graduates to meet initial leadership challenges, Impact Aid, USMA facilities including Ladycliff College, and other matters relating to the Military Academy that the Board decides to consider.

All proceedings are open. For further information, contact COL D. P. Tillar, Jr., United States Military Academy, West Point, New York, telephone (914) 938-4723/2785.

For the Board of Visitors.

D. P. Tillar, Jr.,

Col., GS, Executive Secretary USMA Board of Visitors.

[FR Doc. 82-14472 Filed 5-26-82; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Community Education Advisory Council; Meeting

AGENCY: Community Education Advisory Council, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming meeting of the Community Education Advisory Council. It also describes the functions of the Council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: June 14 and 15, 1982.

ADDRESS: Portland Hilton, 921 S.W. 6th Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi, Department of Education, Community Education Program, 7th and D Streets, S.W., Regional Office Building No. 3, Room 5622, Washington, D.C. 20202, Telephone: (202) 245-0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Public Law 95-561. The Council is established to advise on policy matters relating to the interest of community schools.

All sessions of this meeting are open to the public. The meeting will begin at 9:00 a.m. on Monday, June 14 and end at 4:30 p.m. On Tuesday, June 15, the meeting will begin at 9:00 a.m. and end at 3:00 p.m.

At the last meeting held in Washington, D.C. on February 26 and 27, 1982 the Council discussed the National evaluation process; examined future roles, functions, and projects of the Council, considered the Federal role in Community Education; and reviewed the Council's annual report.

Proposed agenda items for this meeting include:

- (1) The future role of the Council
- (2) The Federal role in education
- (3) Groups that can assist in service delivery to communities

(4) Consideration of other administrative matters

Records shall be kept of all Council proceedings and shall be available for public inspection in Regional Office Building No. 3, Room 5622, 7th and D Streets, S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on May 21, 1982.

John K. Wu,

Deputy Assistant Secretary.

[FR Doc. 82-14436 Filed 5-26-82; 8:45 am]

BILLING CODE 4000-01-M

Office of the Secretary

Legislative, Rules and Regulations Committee; Meeting

AGENCY: National Advisory Council on Indian Education; Education.

ACTION: Notice of meeting.

SUMMARY: This meeting sets forth the scheduled and proposed agenda of a forthcoming meeting of the legislative, Rules and Regulations Committee and Executive Committee of the National Advisory Council on Indian Education concerning the Reauthorization of the Indian Education Act, Pub. L. 92-318, which expires September 30, 1984. The Committees will be reviewing the Indian Education Act Rules and Regulations, legislative analysis of Public Law 92-318, the Indian Education Act of 1972, with regard to proposed legislative changes in the Act at the time of Reauthorization and discuss strategies for introduction of a bill to reauthorize Pub. L. 92-318. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 16, 1982, 9:00 a.m. to 5:00 p.m., June 17, 1982, 9:00 a.m. to 5:00 p.m.; and, June 18 1982, 9:00 a.m. to 5:00 p.m.

ADDRESS: Center for Indian Education, 302 Farmer Building, Arizona State University, Tempe, Arizona 85281 (602) 965-6292.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Doss, Executive Director, National Advisory Council on Indian Education, 425 13th Street, N.W., Suite 326, Washington, D.C. 20004 (202) 376-8882.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of Pub. L. 92-318, (20 U.S.C. 1221g). The Council is established to submit to the Secretary of Education a list of nominees for the position of Director of

Indian Education Programs, advise the Secretary of Education with respect to the administration of any program in which Indian children or adults participate from which they can benefit, review applications for assistance under Title III of the Act of September 30, 1950, and make recommendations to the Secretary with respect to their approval, evaluate programs and projects carried out under any program of the Department of Education in which Indian children or adults can participate or from which they can benefit and disseminate the results of such evaluations, provide technical assistance to local educational agencies and to Indian educational agencies, institutions and organizations, assist the Secretary of Education in developing criteria and regulations for the administration and evaluation of grants made under section 303(b) of the Act of September 30, 1950, submit to Congress not later than June 30 of each year a report of its activities; and, be consulted by the Secretary of Education regarding the definition of the term Indian.

The meeting will be open to the public. The proposed agenda includes: Reviewing the Indian Education Act Rules and Regulations, a legislative analysis of Public Law 92-318, the Indian Education Act of 1972, with regard to proposed legislative changes in the Act at the time of Reauthorization and to discuss strategies for introduction of a bill to reauthorize P.L. 92-318.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Suite 326, Washington, D.C. 20004.

DATE: May 24, 1982. Signed at Washington, D.C.

Dr. Michael P. Doss,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 82-14411-Filed-5-26-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given to the following meeting:

Name: Magnetic Fusion Advisory Committee
Date and time: Tuesday, June 1, 1982—9:00 a.m. to 5:00 p.m.; Wednesday, June 2, 1982—9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Energy, Room 7E-069, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585
 Contact: Gloria Decker, Information Management Systems Branch, U.S. Department of Energy, Forrestal Building, Room 4D-024, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-252-8990

Purpose of the committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Less than 15-days notice is being given for the meeting due to the urgent need for immediate advice and recommendations for consideration in connection with DOE's FY 84 budget submission by June 14, 1982.

Tentative Agenda

- Introduction and welcome
- Presentation of draft of new fusion program strategy
- Discussion of strategy
- Discussion of appropriate levels of funding for FY 84
- Discussion of issues
- Presentation of program plan for confinement systems
- Establishment of timetable and subcommittees for MFAC advice and recommendations
- Public comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gloria Decker at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available approximately 30 days following the meeting.

Issued at Washington, DC, on May 25, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82-14709 Filed 5-26-82; 10:49 am]

BILLING CODE 6450-01-M

Determination To Establish Magnetic Fusion Advisory Committee

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby

certify that the establishment of the Magnetic Fusion Advisory Committee (MFAC) is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to Section 6(a) of OMB Circular A-63 (Revised).

The purpose of the Committee is to provide advice and guidance on a continuing basis to the Secretary of Energy, through the Director of Energy Research, on the National Magnetic Fusion Energy Program, in the following ways:

a. Conducts periodic reviews of elements of the program and recommends any changes considered desirable on the basis of scientific and technological advances or other factors;

b. Advises on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion;

c. Advises on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program;

d. Provides advice and guidance on any issues relating to the program, as requested by the Secretary or the Director of Energy Research.

Further information concerning this Committee can be obtained from Gloria Decker (202-252-8990).

Dated: May 25, 1982.

James B. Edwards,
 Secretary of Energy.

[FR Doc. 82-14672 Filed 5-26-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6124-000]

American Enertech; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 20, 1982.

Take notice that on March 17, 1982, American Enertech (Applicant) filed an application under section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 6124) would be located on East Bank of Sacramento River, Sutter County, California. Correspondence with the Applicant should be directed to: Mr.

Low Florence, President of Enertech Enterprises, Inc., 2160 Royale Road, Suite #20, Sacramento, California 95815.

Project Description—The proposed project would consist of: (1) a 14-foot wide, 52-foot long twin hull flotation unit permanently moored on the east bank of the Sacramento River; (2) a 22-foot diameter vertically mounted turbine-generating unit with a rated capacity of 100 kW that utilizes a paddle wheel drive, and (3) appurtenant facilities. Applicant estimates a 500,000 kWh average annual energy production.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project. Project energy would be sold to Pacific Gas and Electric Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State of California Department of Fish and Game are requested, for the purposes set forth in section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 14, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested

person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before July 14, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14378 Filed 5-26-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES82-55-000]

Detroit Edison Co.; Application

May 20, 1982.

Take notice that on May 13, 1982, the Detroit Edison Company, filed an Application pursuant to section 204 of the Federal Power Act, seeking

authorization to issue short-term debt in the amount of \$220 million and to assume obligation of up to \$230 million short-term debt to be issued pursuant to a loan agreement and a nuclear fuel heat purchase contract.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before June 10, 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). The Application is on file and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14379 Filed 5-26-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TC82-36-000]

Inland Gas Company, Inc.; Tariff Filing

May 20, 1982.

Take notice that on May 14, 1982, The Inland Gas Company, Inc. (Inland), 340 17th Street, Ashland, Kentucky 41101, tendered for filing in Docket No. TC82-36 revised sheets as part of its FERC Gas Tariff, First Revised Volume No. 1, to constitute a permanent curtailment plan, all as more fully set forth in the revised sheets tendered for filing with the Commission and open to public inspection.

Inland has tendered the following sheets for filing:

- Second Revised Sheet No. 4.
- Second Revised Sheet No. 5.
- Third Revised Sheet No. 6.
- Third Revised Sheet No. 7.
- Third Revised Sheet No. 8.

This filing is said to be made in compliance with the order of the Commission issued January 25, 1982, in Docket No. RP76-3, 18 FERC ¶61,053. Inland proposes to make the sheets effective January 1, 1983.

Inland states that the revised sheets are intended to continue in effect on a permanent basis the curtailment procedures encompassed in its currently effective interim curtailment plan with one substantive change, which is to provide Inland and its curtailable customers with the ability to adjust their daily contract quantities as may be required to reflect current market conditions. The proposed tariff change is said to provide that no upward adjustment of any customer's daily contract quantity will be made during a period when Inland either is implementing curtailment or reasonably

anticipates that curtailment will be necessary at any time during the succeeding 24 months.

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 and protests should be filed on or before June 7, 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.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14382 Filed 5-26-82; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES82-56-000]

Iowa Public Service Co.; Application

May 20, 1982.

Take notice that on May 13, 1982, the Iowa Public Service Company (Applicant), filed an Application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of (a) up to 850,000 shares of Common Stock (par value \$5 per share) in connection with the Company's Dividend Reinvestment and Stock Purchase Plan, as amended, and (b) up to 300,000 shares of Common Stock (par value \$5 per share) in connection with the operation of the Employee's Stock Ownership Plan of Iowa Public Service Company and Participating Subsidiaries, as amended, and the related Employees' Stock Ownership Trust of Iowa Public Service Company and Participating Subsidiaries, as amended.

Any person desiring to be heard or to make any protest with reference to said Application should, on or before June 10, 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). The Application is on file and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14383 Filed 5-26-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6276-000]**MacGregor Downs, Inc.; Application for Preliminary Permit**

May 20, 1982.

Take notice that MacGregor Downs, Inc. (Applicant) filed on April 30, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6276 to be known as the Lockville Dam Hydroelectric Project located on the Deep River near the town of Moncure in Chatham and Lee Counties, North Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Peter Reynolds, MacGregor Downs, Inc., P.O. Box 790, Cary, North Carolina 27511.

Project Description—The proposed project would consist of: (1) An existing dam, including embankments, canal and gate structures, with a height of 15 feet and length of 600 feet; (2) an existing powerhouse with a proposed installed capacity 1840 kW; (3) an existing 30-acre reservoir with a gross storage capacity estimated at 300 acre-feet; and appurtenant facilities. The average annual energy generation is estimated to be 8,400 MWh. Power would be sold to Carolina Power and Light Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with the consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be \$50,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before July 1, 1982, and should specify

the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petitions to intervene must be received on or before July 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," OR "PETITION TO INTERVENE," as applicable, and the Project Number of This Notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14380 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3722-000]**Bruce J. Massey; Approval By Operation of Law**

May 20, 1982.

Take notice that the Director, Office of Electric Power Regulation, the

Commission's delegate on this matter pursuant to § 375.308 of the Commission's regulations, will take no action on the application for an exemption from licensing of a small hydroelectric project of 5 Megawatts or less for the North State Dam, Project No. 3722, filed on April 21, 1982, by Bruce J. Massey.

The proposed hydroelectric project would have an installed capacity 200 kW and would be located on Lower Little River, in Alexander County, North Carolina.

Accordingly, the exemption is deemed granted by operation of law on July 12, 1982, § 4.109(c) of the Commission's regulations (18 CFR 4.109(c)), subject to the standard terms and conditions set forth in § 4.111(a) of the Commission's regulations (18 CFR 4.111(a)).

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14385 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6232-000]**Steve Miller; Application for Preliminary Permit**

May 20, 1982.

Take notice that Steve Miller (Applicant) filed on April 19, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6232 to be known as the Gregg Creek Project located on Gregg Creek in Humboldt County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Steve Miller, P.O. Box 452, Arcata, California 95521.

Project Description—The proposed project would consist of: (1) An intake structure within the southern bank of Gregg Creek; (2) a 2,750-foot long, 12-inch diameter diversion conduit; (3) a 750-foot long, 12-inch diameter penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 150 kW; and (5) appurtenant facilities.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to prepare a project report including preliminary designs, results of environmental and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field

surveys, and preparing designs is estimated by the Applicant to be \$4,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 5, 1982, the competing application itself, or a notice of intent to file such an application (see 18 CFR 4.30 et seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46: FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 5, 1982, and should specify the type of application forthcoming. Army application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Submission of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than October 4, 1982.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 5, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb,

Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14384 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6195-000]

North Carolina Electric Membership Corp.; Application for Preliminary Permit

May 20, 1982.

Take notice that North Carolina Electric Membership Corporation (NCEMC) (Applicant) filed on April 8, 1982, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for Project No. 6195 to be known as the Cape Fear River Lock and Dam No. 1 Water Power Project located on the Cape Fear River near Kelly and Elizabethtown in Bladen County, North Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Brian M. Flattery, Director, Construction and Alternative Project, North Carolina Electric Membership Corporation, 3333 North Boulevard, P.O. Box 27306, Raleigh, North Carolina.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Cape Fear River Lock and Dam No. 1. The project would consist of: (1) A proposed powerhouse with dual generating units having an estimated total installed capacity of 3,000 kW and producing an average annual energy output of 22 GWh; (2) a proposed $\frac{1}{2}$ -mile, 24.9 kV primary transmission line to connect to an existing Four-County Electric Membership line; and, (3) appurtenant facilities. The proposed market for the power is Four-County Electric Membership Corporation with excess power distributed to other NCEMC member corporations.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36

months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be \$49,876.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself (see: 18 CFR 4.30 et seq. (1981)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file and application for license or exemption must be submitted to the Commission on or before August 2, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of

the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14386 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6197-000]

North Carolina Electric Membership Corp.; Application for Preliminary Permit

May 20, 1982.

Take notice that North Carolina Electric Membership Corporation (NCEMC) (Applicant) filed on April 8, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)-825(r)] for Project No. 6197 to be known as the W. Kerr Scott Dam Water Power Project located on the Yadkin River near North Wilkesboro, in Wilkes County, North Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Brian M. Flattery, Director, Construction and Alternative Project, North Carolina Electric Membership Corporation, 3333 North Boulevard, P.O. Box 27306, Raleigh, North Carolina.

Project Description.—The proposed project would utilize the existing U.S. Army Corps of Engineers' W. Kerr Scott Dam. The project would consist of: (1) a proposed powerhouse with a single generating unit having an estimated total installed capacity of 2,000 kW and producing an average annual energy output of 10.5 GWh; (2) a proposed 1-mile, 115 kV primary transmission line to connect to an existing Blue Ridge Electric Membership line; and, (3) appurtenant facilities. The proposed market for the power is Blue Ridge Electric Membership Corporation with excess power distributed to other NCEMC member corporations.

Proposed Scope of Studies Under Permit.—A preliminary permit, if issued, does not authorize construction. The

applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, state, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be \$49,876.

Competing Applications.—Anyone desiring to file a competing application for preliminary permit must submit to the Commission, on or before August 30, 1982, the competing application itself [see 18 CFR 4.30 et seq. (1981)]. A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before August 2, 1982, and should specify the type of application forthcoming. Applications for licensing or exemption from licensing must be filed in accordance with the Commission's regulations [see 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments.—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene.—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before August 2, 1982.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," OR "PETITION TO INTERVENE," as applicable, and the

Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14387 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA82-19-000]

Phillips & Spradley; Application for Staff Adjustment

May 20, 1982.

On April 29, 1982, Phillips & Spradley (Applicant), 900 American Bank Tower, Austin, Texas 78701 filed an application for a staff adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. IV 1980), and § 1.41 of the Federal Energy Regulatory Commission (Commission) Rules of Practice and Procedure. Specifically, Applicant seeks an adjustment from § 273.202 of the Commission's Regulations.

Applicant states it would suffer inequity, special hardship and unfair distribution of burdens if unable to collect the section 102 price in place of the section 109 price for natural gas sales from the Kirk Gas Unit No. A-3 well (A-3 Well) for the period between April 20, 1981 and May 5, 1981. The difference in price is \$95,164.35. Applicant states that it failed to file timely its section 102 application with the jurisdictional agency prior to beginning its sale of gas from the A-3 well due to the blow out of the adjacent A-1 well. Further, Applicant states that it was necessary to immediately attach the A-3 well to the pipeline in order to relieve bottom hole pressure in the A-1 Well, and bring it under control. As further reason for its inability to file timely, Applicant states that the application included the jurisdictional agency requirement of a completion report which could not be filed until the A-3 well was completed and tested.

The procedures applicable to the conduct of this adjustment proceeding

are found in § 1.41 of the Commission's Rules of Practice and Procedure. Order No. 24, issued March 22, 1979 (44 FR 18961, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before June 11, 1982.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14388 Filed 5-26-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 3444-001]

Rocky Gorge Corp., Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

May 20, 1982.

Take notice that on April 23, 1982, the Rocky Gorge Corporation (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (Project No. 3444) would be located on the Great Works River in the town of South Berwick, York County, Maine. Correspondence with the Applicant should be directed to: John Truebe, Lakeside Engineering, Mirror Lake, New Hampshire 03853.

Project Description—The proposed project would consist of: (1) An existing 10-foot high, 140-foot long concrete gravity, spillway dam; (2) an existing 43-acre reservoir with a usable storage capacity of 48 acre-feet at 77.7 feet M.S.L. with 14-inch high flashboards at the dam; (3) a new 40-foot long, 6-foot square concrete penstock; (4) a new 40-foot long, 42-inch diameter metal penstock; (5) a new 160-foot long, 54-inch diameter metal penstock; (6) a new upper powerhouse containing a single 140-kW turbine-generator for environmental flows; (7) a new lower powerhouse containing a single 360-kW turbine-generator; (8) a new 50-foot long 12-kV transmission line from each powerhouse; and (9) appurtenant facilities. The project would generate up to 2,000,000 kWh annually. Energy would be sold to Central Maine Power Company.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Maine Department of Marine Resources are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before July 9, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

protests, or petitions to intervene must be received on or before July 9, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-14381 Filed 5-26-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6258-000]

White Chuck Water Co.; Application for Preliminary Permit

May 20, 1982.

Take notice that White Chuck Water Company (Applicant) filed on April 26, 1982 an application or preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6258 to be known as the Boulder River Hydroelectric Project located on Boulder River within Mt. Baker National Forest in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Keith B. Ronnholm, Project Manager, The White Chuck Water Company, 6233 39th Ave. NE., Seattle, Washington 98115 and Mr. Leo S. Fisher, 1200 New Hampshire Ave., NW., Suite 423, Washington, D.C. 20036.

Project Description—The proposed project would consist of: (1) A 10-foot high, 70-foot long diversion structure; (2) a 6-foot diameter, 4,000-foot long tunnel; (3) a 5.5-foot diameter, 7,900-foot long pipe; (4) a 4.5-foot diameter, 1,500-foot long penstock; (5) a powerhouse to contain a single generating unit with a rated capacity of 5,600 kW; (6) a tailrace; (7) switchyard and

transformers adjacent to powerhouse, and (8) a 1.5 mile long, 57 kV transmission line. The estimated average annual energy generation is 24,000,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The applicant seeks a preliminary permit for a period of 24 months during which it would conduct engineering, environmental and economic feasibility studies as well as prepare a FERC license application. The estimated cost of conducting these studies and preparing a FERC license application is \$100,000. No new roads will be required.

Competing Applications—This application was filed as a competing application to City of Darrington, Washington's application for Project No. 5916 filed on January 22, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice.

Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the Application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions To Intervene—Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 29, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST," or "PETITION TO INTERVENE," as applicable, and the Project Number of this notice. Any of

the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-14389 Filed 5-26-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AEN-FRL-2102-5]

California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of scope of waiver of Federal preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted optional 1983 and subsequent model year oxides of nitrogen (NOx) standards (and accompanying recall provisions), a 1982 model year small volume motorcycle manufacturer allowance for hydrocarbons (HC) and optional 1983 and subsequent model year motorcycle evaporative emission test procedures. All of these amendments were adopted as cost-saving measures and were found by California to have no significant adverse impact on air quality. I find these amendments to be included within the scope of previously granted waivers of Federal preemption. Since these procedures are included within the scope of these waivers, a public hearing to consider them is not necessary. The public has already had an opportunity to comment in advance of this determination and offered no comments on these amendments.¹ Therefore, my

¹ Comments were also solicited on an application by CARB dated September 17, 1981, for a determination that its optional 1984 and subsequent model year heavy-duty engine exhaust emission

determination on these amendments is final.

ADDRESSES: Copies of the California amendments at issue in this notice, a decision document containing an explanation of my determination, and documents used in arriving at this determination, are available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the Environmental Protection Agency, Central Docket Section, Gallery I, 401 M Street, S.W., Washington, D.C. 20460 (Docket EN-81-18). Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. Smith, as noted below.

FOR FURTHER INFORMATION CONTACT:

Mary T. Smith, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2514.

SUPPLEMENTARY INFORMATION: I have determined that CARB's optional 1983 NOx standards and motorcycle amendments are within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended, (Act).² Specifically, the changes include an optional 75,000 miles NOx standard with a new accompanying recall provision for 1983 and subsequent model year passenger cars and light-duty truck and medium-duty vehicles under 4,000 pounds equivalent inertia weights; a provision that relaxes the HC standard for model year 1982 only for motorcycle manufacturers which sell less than 3,000 units in California per year; and a provision to allow, in certain circumstances, the use of bench test data to determine evaporative emissions durability for 1983 and subsequent model year motorcycles. The changes have no significant adverse environmental impact.

A full explanation of my determination is contained in a decision document, which may be obtained from EPA as noted above.

Since these amendments are included within the scope of previously granted waivers of Federal preemption, a public hearing to consider them is not necessary. The public has already had an opportunity to comment in advance

standards and test procedures are within the scope of previous waivers. By letter of April 9, 1982, CARB requested that a decision on its application be delayed until EPA reviews its own standards and test procedures for these vehicles. (See EPA's Notice of Proposed Rulemaking, 47 FR 1642 (January 13, 1982).)

² 43 FR 25729 (June 14, 1978); 47 FR 1015 (January 8, 1982); 43 FR 998 (January 5, 1978).

of this determination (47 FR 849 (Jan. 7, 1982)) and offered no comments on these amendments. Therefore, my determination on these amendments is final.

Note.—My decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's standards in order to produce motor vehicles for sale in California. For this reason I hereby determine and find that this decision is of nationwide scope and effect.

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981) requires EPA to determine initially whether a rule that it intends to propose or issue is a major rule and to prepare Regulatory Impact Analyses for all major rules. Section 1(b) of the Order defines "major rule" as any regulation that is likely to result in:

- (a) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or
- (3) 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.

EPA has determined that this action does not constitute a major rule. The action confirms California's authority to enforce regulations which will reduce regulatory requirements on manufacturers, as compared to regulations applicable to the previous model year. If anything, the action will likely result in cost savings to consumers, Government agencies and industries affected because of the reduced requirements, and will likely have a beneficial effect on competition (both foreign and domestic), employment, investment, productivity, and innovation.

Accordingly, a Regulatory Impact Analysis is not being prepared for this waiver determination.

This action is not a "rule" as defined in 5 U.S.C. 601(2) because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Dated: May 19, 1982.

Anne M. Gorsuch,
Administrator.

[FR Doc. 82-14309 Filed 5-26-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS 81007; TSH-FRL-2123-3]

TSCA Chemical Substances Inventory; Intent To Remove Certain Incorrectly Reported Substances

Note.—This document, as originally published at 47 FR 20663, May 13, 1982, was incomplete. For this reason, the document is republished in full text below. The Environmental Protection Agency has formally requested that the original comment date of 60 days after publication be recomputed. Accordingly, a new comment date is incorporated in this reprint.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA, in reviewing the chemical substances included on the Toxic Substances Control Act Chemical Substances Inventory, has concluded that certain chemical substances were incorrectly reported and listed. The Agency intends to remove twenty-seven incorrectly listed substances from the Inventory, and solicits public comments on the appropriateness of that removal.

DATE: Comments must be received by EPA on or before July 26, 1982.

ADDRESSES: Three copies of the written comments should be addressed to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. 401, 401 M St., SW., Washington, D.C., 20460. Comments should bear the identifying notation OPTS 81007. The administrative record supporting this action is available for public inspection in the OPTS Reading Room, E-107, at the above address, from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.: (554-1404), Outside the U.S.A. (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Section 8(b) of the Toxic Substances Control Act (TSCA), Pub. L. 94-469, requires the Administrator of the EPA to identify, compile and keep current a list of chemical substances which are manufactured, imported, or processed for commercial purposes in the United

States. To meet this requirement, EPA promulgated the Inventory Reporting Regulations (40 CFR Part 710) which appeared in the *Federal Register* of December 23, 1977 (42 FR 64572). These Regulations provided the basis for the initial compilation of the TSCA Chemical Substances Inventory which identifies the chemical substances in U.S. commerce.

The Inventory informs the public which chemical substances are being manufactured, imported, or processed in the United States for commercial purposes. The Inventory also has a regulatory purpose. It defines what is a "new" chemical substance for purposes of section 5(a)(1)(A) of TSCA. If a chemical substance is not included on the Inventory, it is considered a "new" substance and a premanufacture notification (PMN) is required at least 90 days before the manufacture or import of such a substance can begin.

For the Inventory to perform its functions, it must be continuously and accurately updated as new information becomes available. Updated information includes identities of new chemical substances which are being introduced into U.S. commerce and corrections for previously reported information. Recognizing industry's need for making corrections to incorrectly submitted Inventory reports, EPA announced, in the *Federal Register* of July 29, 1980 (45 FR 50544), that it would continue to accept certain types of corrections related to substances previously reported for the Inventory. The types of corrections specified in the July 29 *Federal Register* notice relate primarily to chemical identity.

Since the publication of the Initial Inventory in June 1979 and the Revised Inventory in July 1980, the Agency has received numerous requests from companies to correct certain previously submitted Inventory reports. In reviewing these correction requests and the corresponding reports originally submitted for the Inventory, EPA has concluded that a number of the chemical substances currently listed on the Inventory were erroneously reported. Furthermore, in reviewing the total body of Inventory submissions, it was discovered that most of the incorrectly listed substances were reported by only one submitter, i.e., the person who subsequently requested that EPA correct the chemical identity.

There are obviously different reasons why a chemical substance was incorrectly reported for the Inventory. First, the mistake could have been typographical or transcriptional and was not known to the submitter at the time

when the original report was submitted. Secondly, improved analytical equipment and methods may allow for a more accurate description of a previously reported substance. Thirdly, EPA may identify reporting errors and request corrections. Regardless of the source of error, the end result is the same: A chemical substance not eligible for inclusion on the Inventory was reported and included on the Inventory. If these mistakes are not corrected, the integrity of the Inventory will suffer and its reliability as an accurate compilation of commercial substances for TSCA purposes will diminish.

The Inventory Reporting Regulations specify that any substance reported for the Inventory must have been manufactured, imported, or processed for commercial purposes in the United States since January 1, 1975. A chemical substance incorrectly reported for the Inventory might not have satisfied this requirement.

To date, EPA has officially removed from the TSCA Inventory only the chemical substance known as 2-naphthalenamine, Chemical Abstracts Service Registry Number 91-59-8. (46 FR 11356 and 46 FR 30563). In this notice, the Agency proposes to remove twenty-seven additional chemical substances and the body of Inventory. Based on EPA's review of these substances and the body of Inventory submissions, these substances and the body of Inventory submissions, these substances were found to be incorrectly reported and listed. The substances proposed for removal from the TSCA Inventory are listed below in ascending Chemical Abstracts Service (CAS) Registry Number sequence. Each of the twenty-seven substances is further identified by its corresponding CA Index Name.

Each of the twenty-seven substances proposed for removal was reported for the Inventory. Subsequently, the person who reported the substance informed EPA that the chemical identity originally reported to EPA and included on the Inventory was incorrect. The corrected identity for each of the twenty-seven substances has been added to the Agency's Master Inventory File. EPA checked each of the twenty-seven substances in question, as originally reported, to determine whether any other person had also reported the same substance for the Inventory. If someone else had correctly reported the substance, it would have been retained for the Inventory. As to the twenty-seven substances, however, no other person had reported them. Accordingly, they do not appear to be eligible for continued inclusion on the Inventory.

Publication of this notice does not mean that EPA will actually and automatically delete from the TSCA Inventory any of the twenty-seven chemical substances listed below. Rather, the Agency solicits public comments on its intent to remove from the TSCA Inventory the listed chemical substances. EPA is specifically interested in knowing whether any of the chemical substances listed below have been manufactured, imported or processed for commercial purposes by anyone during the period January 1, 1975 through the publication date of this notice. The Agency is also interested to know whether any person can show that any of the chemical substances listed below could have been properly reported for either the Initial or the Revised Inventory. EPA also solicits comments from anyone who believes that any of the chemical substances listed below should not be removed from the TSCA Inventory for any reason. All such comments must be submitted to EPA within the 60-day comment period.

EPA will review all comments received and will make a determination regarding the eventual status of each of the chemical substances listed below. The Agency will announce its decision in a final notice of disposition in the *Federal Register*. If the Agency determines that any of the chemical substances listed should not be removed from the Inventory, an eligible manufacturer, importer, or processor of that substance would then be invited to submit an Inventory report to EPA to replace the one that was incorrectly submitted. The substance could then remain on the Inventory. On the other hand, if the Agency concludes that a substance is not eligible for inclusion on the Inventory, effective with the publication of the final notice of disposition, the substance will be considered removed from the Inventory—the presence of its name in any previously published version of the Inventory notwithstanding. In that event, the premanufacture notification requirements of section 5(a) of TSCA would apply to any manufacture or importation of the substance from the date of removal on.

With the publication of this notice, any on-going manufacture, importation, or processing of any of the twenty-seven chemical substances listed below begun prior to the publication date of this notice may continue until publication of the final notice of disposition. EPA will not, however, consider any request to retain any of the listed substances on the Inventory based solely on

manufacture, importation or processing of that substance which begins after the first publication date of this notice.

Chemical Substances Proposed For Removal From The TSCA Inventory

- 76-08-4 2-Propanol, 1,1,1-tribromo-2-methyl
- 145-73-3 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
- 372-44-1 Phenol, compd. with trifluoroborane(1:1)
- 622-04-8 2-Propanol, 1,3-diphenoxy
- 4677-09-2 1*H*-Indole, 2,3-dihydro-1,3,3-trimethyl-2-[(phenylazo)methylene]
- 4769-73-7 2-Propanol, 1-chloro-3-phenoxy
- 25416-81-3 Copper, [dihydrogen disulfamoylphthalocyaninedisulfonato-(2-)]
- 60130-75-8 1,2-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-butanediol and α -hydro- ω -hydroxypoly(oxy-1,4-butanediyl)
- 63494-59-7 Ethanesulfonamide, 2-[ethyl(3-methyl-4-nitrosophenyl)amino]-N-methyl
- 65036-54-6 Benzenediazonium, 4-[6-methyl-7-sulfo-2-benzothiazolyl]-, chloride
- 65060-25-5 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with butyl 2-propenoate, ethenylbenzene and 2-propenoic acid
- 65072-13-1 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with ethenylbenzene and 2-propenoic acid
- 65086-37-5 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with ethenylbenzene, 2-hydroxyethyl 2-propenoate, 1,3-isobenzofurandione and methyl 2-methyl-2-propenoate
- 65121-76-8 Phenol, 2-methyl-4,6-dinitro-, lead (2+) salt
- 65122-05-6 Diazene, [(1,3-dihydro-1,1,3-trimethyl-2*H*-inden-2-ylidene)methyl](2-methoxyphenyl)
- 65151-55-5 Docosanoic acid, 1,3,5-triazine-2,4,6-triyltris[(methoxymethyl)imino]-methylene ester
- 65530-81-6 Poly(difluoromethylene), α -(2,2-dichloro-1,1,2-trifluoroethyl)- ω -hydro-
- 65717-13-7 4-Pyrimidinecarboxylic acid, 1,2,3,6-tetrahydro-5-nitro-2,6-dioxo-, monopotassium salt
- 667892-76-1 Nonanoic acid, 2,2-dimethyl-, oxiranylmethyl ester, polymer with butyl 2-propenoate, methyl 2-methyl-2-propenoate and 2-propenoic acid

- 67892-78-8 Nonanoic acid 2,2-dimethyl-, oxiranylmethyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 2-hydroxyethyl 2-propenoate and 2-propenoic acid
- 68110-21-4 Zincate(1-), trichloro-, hydrogen, compd, with N,N-diethyl-4-[(1-methyl-1H-1,2,4-triazol-5-yl)azo] benzenamine (1:1)
- 68213-43-4 Fatty acids, tall-oil, polymers with disphenol A, bisphenol A diglycidyl ether, Bu acrylate, 2-(dimethylamino)ethyl methacrylate, 2-[(1,1-dimethylethyl)amino]ethyl methacrylate, glycidyl 2,2-dimethylnonanoate, hydroxyethyl methacrylate and Me methacrylate
- 71002-23-8 1,1'-bis(3,4-dimethoxyphenyl)Bi-1H-imidazole, 2,2',5,5'-tetrakis(2-chlorophenyl)-
- 71735-70-1 β -Alanine, N-[3-(nonyloxy)propyl]-
- 71799-76-3 9,11-Octadecadienoic acid, (Z,Z)-, polymer with 2-hydroxyethyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate, (Z,Z)-9,12-octadecadienoic acid and oxiranylmethyl 2,2-dimethylnonanoate
- 74398-77-9 Benzenediazonium, 2-methoxy-5-methyl-4-[(3-sulphophenyl)azo]-, chloride
- 74642-98-1 Cuprate(2-), [bis(aminosulfonyl)-29H,31H-phthalocyaninedisulfonato(4-)-N²⁹, N³⁰, N³¹, N³²]-, lithium sodium

Dated: April 27, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-13006 Filed 5-12-82; 8:45 am]

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[General Doc. No. 80-398]

Preparations for the 1983 Region 2 Administrative Radio Conference; Extension of Comments Period

AGENCY: Federal Communications Commission.

ACTION: Order extending time for filing comments and reply comments in general Docket No. 80-398.

SUMMARY: This Order provides a three week extension for filing comments and reply comments in the *Third Notice of Inquiry* relating to Preparations for the 1983 Region 2 Administrative Radio Conference of the International Telecommunication Union for the Planning of the Broadcasting Satellite Service in the 12 GHz band and the Associated Uplinks. This action is taken

by the Commission, on its own motion, to afford the public ample opportunity to review and provide comments on the final written Report of the Commission's BSS Advisory Committee which is to be placed in the Docket file. The issues in this Report are inextricably linked with those in the *Third Notice of Inquiry*. Due to various reasons, final consideration and approval of the Advisory Committee report was not completed until May 10, 1982.

DATE: Comments must be submitted on or before June 11, 1982. Reply comments are due on or before July 2, 1982.

ADDRESS: Comments may be mailed to: The Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554

or delivery to Room 22 between 8:00 A.M. and 5:30 P.M. Comments received may be inspected in Room 222 between 8:00 A.M. and 5:30 P.M.

FOR FURTHER INFORMATION CONTACT: Edward R. Jacobs, Acting Chief, International Staff, Room 7002, 2025 M Street NW., Washington, D.C. (202) 653-8102.

In the matter of an inquiry relating to preparations for the 1983 Region 2 Administrative Radio Conference of the International Telecommunication Union for the Planning of the Broadcasting-Satellite Service in the 12 GHz Band and the associated Uplinks Gen. Docket No. 80-398, 47 FR 18046, April 27, 1982.

Order

Adopted: May 11, 1982.

Released: May 14, 1982.

By the Chief Scientist:

On April 20, 1982, the Commission released its *Third Notice of Inquiry* (FCC 82-139) in the above-captioned proceeding. That *Notice* specified May 21, 1982 and June 11, 1982 as the due dates for the filing of comments, and reply comments, respectively. Additionally, the *Notice* also stated that the formal reports of the Commission's BSS Federal Advisory Committee would be placed in the Docket file of this proceeding and thereby be available for public inspection and scrutiny. The charter of the Advisory Committee called for the submission of final written reports by April, 1982. Due to various reasons, final consideration and approval of the Advisory Committee report could not be completed before May 10, 1982.

Since the report of the advisory Committee will play a significant role in influencing decisions concerning U.S. proposals to the 1983 Region 2 BSS Conference, and since the issues to be treated in the report are inextricably

related to the issues discussed in the *Third Notice of Inquiry*, The commission desires that the public be afforded an opportunity to comment in this proceeding after ample opportunity to review both documents. Therefore, the Commission, on its own motion, is extending the dates for filing comments and reply comments to the *Third Notice of Inquiry* in this proceeding to June 11, 1982 and July 2, 1982, respectively.

S. J. Lukasik,

Chief Scientist.

[FR Doc. 82-14464 Filed -82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-171]

Fortune Federal Savings & Loan Association, Clearwater, Fla.; Final Action approval of Conversion Applications

Dated: May 24, 1982.

Notice is hereby given that on May 12, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 82-336 approved the application of Fortune Federal Savings and Loan Association, Clearwater, Florida ("Association"), for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, 260 Peachtree Street, N.W., Peachtree Center Station, P.O. Box 56527, Atlanta, Georgia, 30303.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 82-14498 Filed 5-26-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-170]

Louisiana Savings Association, Lake Charles, La.; Final Action Approval of Conversion Applications

Dated: May 24, 1982.

Notice is hereby given that on May 12, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 82-335 approved the application of Louisiana Savings

Association, Lake Charles, Louisiana ("Association"), for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Little Rock, 1400 Tower Building, Little Rock, Arkansas 72201.

By the Federal Home Loan Bank Board.
J. J. Finn,
Secretary.

[FR Doc. 82-14499 Filed 5-26-82; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-172]

Phoenix Federal Savings & Loan Association, Muskogee, Okla.; Final Action Approval of Conversion Applications

Dated: May 24, 1982.

Notice is hereby given that on May 14, 1982, the Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), by Resolution No. 82-354 approved the application of Phoenix Federal Savings & Loan Association, Muskogee, Oklahoma ("Association"), for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, N.W., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Topeka, No. 3 Townsite Plaza, 120 6th St., P.O. Box 176, Topeka Kansas, 66603.

By the Federal Home Loan Bank Board.
J. J. Finn,
Secretary.

[FR Doc. 82-14497 Filed 5-26-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreements Nos. 10450, 10451 and T-4041]

Availability of Finding of No Significant Impact

Upon completion of environmental assessments, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreements Nos. 10450, 10451 and T-4041 will not constitute major Federal actions significantly affecting the quality of the human environment within the

meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of environmental impact statements is not required. Agreements Nos. 10450 and 10451 are between Shipping Corporation of India, Ltd., and Scindia Steam Navigation Co., Ltd. Agreement No. 10450 affects cargo movements from Calcutta to U.S. Great Lakes Ports whereas Agreement 10451 affects cargo movements from U.S. Great Lakes Ports to India. Under these agreements the parties, among other things, may agree among themselves on various rates, charges, classifications, practices and related tariff matters to be charged in these trades. Agreement T-4041 is between Puerto Rico Ports Authority and Rice Growers Association of California. The agreement involves construction of specialized facilities for loading and unloading rice and improvements to related berthing facilities at Guaynabo-Catano Waterfront Industrial Area in the Pueblo Viejo of San Juan Harbor.

These Findings of No Significant Impact (FONSI) will become final within 20 days unless petitions for review are filed pursuant to 46 CFR 547.6(b).

The FONSI's and related environmental assessments are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Francis C. Hurney,
Secretary.

[FR Doc. 82-14410 Filed 5-26-82; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Transportation and Public Utilities Service

[E-82-16]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the North Carolina Utilities Commission involving electric rates, Docket No. E-2 (Sub 444).

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in the Administrator of General Services by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly

sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the North Carolina Utilities Commission involving the application of the Carolina Power and Light Company for an increase in its electric rates, Docket No. E-2 (Sub 444).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officer, officials, and employees thereof.

d. The Department of Defense shall add GSA to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: May 18, 1982.

Allan W. Beres,
Commissioner, Transportation and Public Utilities Service.

[FR Doc. 82-14484 Filed 5-26-82; 8:45 am]

BILLING CODE 6820-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Seminar on Implementing the 1990 Prevention Objectives; Open Meeting

On June 17-18, 1982, the Centers for Disease Control (CDC) will convene a seminar to review the 1990 objectives for the Nation and identify innovative ways CDC can enhance its contribution to the accomplishment of the objectives for both urban and rural areas. The meeting is open to the public, limited only by space available.

The meeting is scheduled to convene at 8:30 a.m. (registration at 8:00 a.m.) in Auditorium B, Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

For further information, please contact: Ms. Martha F. Katz, Planning Officer, Office of Program Planning and Evaluation (1-2050), Centers for Disease Control, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, TELEPHONES: FTS: 236-3243, Commercial: 404/329-3243.

Dated: May 20, 1982.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 82-14485 Filed 5-26-82; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on June 29, 1982, at the Holiday Inn, Chevy Chase, Maryland. The meeting will be open to the public from 2:00 p.m. to adjournment for approval of the minutes of the previous meeting, selection of future meeting dates and comments from the Director, and Deputy Director, NIAID, the Director of the Immunology, Allergy, and Immunologic Diseases Program and the Acting Director, Extramural Activities Program with regard to (among other items) budget, and review policies and procedures. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Public Law 92-463, the meeting of the AITRC Allergy and Clinical Immunology Subcommittee will be closed to the public for review, evaluation, and discussion of individual grant applications from 8:30 a.m. until 2:00 p.m. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the Committee members as requested.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20205,

telephone (301) 496-7966, will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Sections 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-14427 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 29-30, 1982, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on June 30, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 28 from 3:00 p.m. to 5 p.m. in the 5th Floor Conference Room of the Lister Hill Center Building.

The meeting on June 29 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 522b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications, as follows: June 29 from 11:00 a.m. to 5:00 p.m., June 30 from 8:30 a.m. to adjournment; and June 28 for the subcommittee meeting from 3:00 to 5:00 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief,

Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20209, telephone number: 301-496-4191, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-14429 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Cancer Clinical Investigation Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, June 28-29, 1982, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on June 28, from 8:30 a.m. to 9:00 a.m., to review administration details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 28, from approximately 9:00 a.m. to adjournment, and on June 29, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Dorothy K. Macfarlane, Executive Secretary, Cancer Clinical Investigation

Review Committee, National Cancer Institute, Westwood Building, Room 819, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7481) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.395, Project grants in cancer treatment research, National Institutes of Health)

Note.—NIH Programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-14430 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Cancer Special Program Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Special Program Advisory Committee, National Cancer Institute, July 15-16, 1982, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. This meeting will be open to the public on July 15 from 9:00 a.m. to 10:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on July 15, from 10:00 a.m. to adjournment, and on July 16, from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. William R. Sanslone, Executive Secretary, Cancer Special Program Advisory Committee, National Cancer Institute, Westwood Building, Room 805,

National Institutes of Health, Bethesda, Maryland 20205 (301/496-7565) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Number 13.392, project grants in cancer construction, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of the Circular.

Dated: May 18, 1982.

Betty J. Beveridge

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-14431 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

General Clinical Research Centers Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers Committee, Division of Research Resources, June 29-30, 1982, Conference Room 7, Building 31, 9000 Rockville Pike, Bethesda, MD.

The meeting will be open to the public on June 29, 1982, from 9:00 a.m. to approximately 12:00 noon, to discuss administrative matters and program plans. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 29, 1982, from approximately 1:00 p.m. to recess, and on June 30, from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545, will provide summaries of the meeting, and rosters of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6595, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of the Circular.

Dated: May 18, 1982.

Betty J. Beveridge

National Institutes of Health, Committee Management Officer.

[FR Doc. 82-14436 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Mental Retardation Research Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Mental Retardation Research Committee, National Institute of Child Health and Human Development, on June 22-23, 1982, in Conference Room A, Landow Building, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 22 from 9:00 a.m. to 11:00 a.m. to discuss items relative to the Committee's activities including announcements by the Acting Director, National Institute of Child Health and Human Development, and the Executive Secretary, Mental Retardation Research Committee.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 22, from 11:00 a.m. to adjournment on June 23 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Mrs. Majorie Neff, Committee Management Officer, NICHD, Landow Building, 6C-08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and roster of committee members. Dr. Stanley L. Slater, Executive Secretary, Mental Retardation Research Committee, NICHD, Landow Building, Room 6C-04, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1696, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.865, Research for Mothers and Children, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-14432 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Microbiology and Infectious Diseases Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Advisory Committee, National Institute of Allergy and Infectious Diseases, on June 28-29, 1982, at the Holiday Inn, Chevy Chase, Maryland. The meeting will be open to the public on June 29 from 2:00 p.m. to approximately 5:00 p.m. for approval of the minutes of the previous meeting, selection of future meeting dates and comments from the Director, and Deputy Director, NIAID, the Director of the Microbiology and Infectious Diseases Program, and the Acting Director, Extramural Activities Program with regard to budget as well as other operational matters and for review of policies and procedures. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Public Law 92-463, the meeting of the Committee will be closed to the public for the review, evaluation, and discussion of individual grant applications and contract proposals. It is anticipated that this will occur from 8:30 a.m. until approximately 6:00 p.m. on June 28, 1982, and from 8:30 a.m. until approximately 2:00 p.m. on June 29, 1982.

These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496-5717, will provide

summaries of the meetings and rosters of the Committee members as required.

Dr. Susan B. Spring, Executive Secretary, Microbiology and Infectious Diseases Advisory Committee, NIAID, NIH, Westwood Building, Room 706, telephone (301) 496-7465, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Sections 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-14433 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis Advisory Board; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the national Arthritis Advisory Board on June 22, 1982, 9:00 a.m. to 5:00 p.m., in the Sea Pines Room, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available.

Certain Subcommittees of the Board will meet the day before, June 21. Further information, times and meeting locations of the Subcommittees may be obtained by contacting Mr. William Plunkett, Executive Director, National Arthritis Advisory Board, P.O. Box 30286, Bethesda, Maryland 20205, (301) 496-1991. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Peters, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496-5765.

Dated: May 18, 1982.

Betty J. Beveridge,

National Institutes of Health, Committee Management Officer.

[FR Doc. 82-14428 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Population Research Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Population Research Committee, National Institute of Child Health and Human Development, on June 24-25, 1982 in the Landow Building, Conference Room "A," 7910 Woodmont Avenue, Bethesda, Maryland.

This meeting will be open to the public on June 24 from 9:00 a.m. to 10:30 a.m. to discuss the program status, new developments and projections for population research centers, program projects and institutional fellowships. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6) and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 24 from 10:30 a.m. to adjournment on June 25 for the review, discussion and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C-08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members. Dr. Dinesh C. Sharma, Executive Secretary of the Population Research Committee, NICHD, Landow Building, Room 6C-03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1696, will furnish other information.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82-14434 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Research Manpower Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health on July 19-20, 1982, at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland, 20014.

This meeting will be open to the public on July 19, 1982, from 8:00 p.m. to approximately 10:00 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung and Blood Institute.

In accordance with the provisions set forth in Section 552b(C)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 20, 1982, from 8:00 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Carol H. Letendre, Executive Secretary, NHLBI, Westwood Building, Room 548, Bethesda, Maryland 20205, phone (301) 496-7363, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

Dated: May 18, 1982.

Betty J. Beveridge,

National Institutes of Health Committee Management Officer.

[FR Doc. 82-14435 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service National Toxicology Program; Availability of Second Annual Report on Carcinogens

The HHS' National Toxicology Program (NTP) today announces the

availability of the *Second Annual Report on Carcinogens*. For each of the 88 substances included, the report provides available information on their description and use, levels and kinds of human exposures produced, evidence of carcinogenicity obtained from epidemiology or from animal experiments, and the status of their regulation under current applicable Federal statutes.

Publication of an annual report on carcinogens is required by a 1978 Amendment to the Public Health Service Act (Section 262, Pub. L. 95-622) which requires HHS to publish annually "a list of all substances * * * which are either known to be carcinogens or which may reasonably be anticipated to be carcinogens and * * * to which a significant number of persons residing in the United States are exposed."

For the purposes of this report, "known" carcinogens are defined as substances which are associated with human cancer. Substances which are "reasonably anticipated to be carcinogens" are those for which there is sufficient evidence of carcinogenicity in experimental animals.

Copies of the Second Annual Report on Carcinogens are available from: NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Please include a pre-addressed mailing label.

Comments on the Second Annual Report on Carcinogens are welcome. Any new data, corrections, or suggestions should be sent to: Dr. David P. Rall, Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: May 12, 1982.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 82-14437 Filed 5-26-82; 8:45 am]

BILLING CODE 4140-01-M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records: 09-30-0045, "Respondents in a Validity/Reliability Study of Self-Reported Drinking," HHS/ADAMHA/NIAAA.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records entitled, "Respondents in a Validity/Reliability Study of Self-Reported Drinking," HHS/ADAMHA/NIAAA, in the Alcohol, Drug Abuse, and Mental Health Administration

(ADAMHA). The system notice establishes two routine uses. PHS invites interested persons to submit comments on the proposed routine uses on or before June 28, 1982.

DATES: PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on May 18, 1982. PHS has requested that OMB grant a waiver of the usual requirement that a system of records not be put into effect until 60 days after the report is sent to OMB and the Congress. If this waiver is granted, PHS will publish a notice to that effect in the *Federal Register*.

ADDRESS: Address comments to: Project Officer, Validity/Reliability Study of Self-Reported Drinking, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 16C-16, Rockville, Maryland 20857.

The public may inspect the comments we receive, at the above address, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry Malin, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 16C-16, Rockville, Maryland 20857. Telephone: (301) 443-2958.

SUPPLEMENTARY INFORMATION: The purpose of the proposed system of records is to pretest and evaluate questions designed to obtain valid, reliable data on alcohol consumption among the general population as well as among a Hispanic subset. This system of records will contain individuals' responses to variations in two types of data collection instruments. The responses will be used in a study conducted by a contractor for the National Institute for Alcohol Abuse and Alcoholism (NIAAA). The purpose of the data collection instruments which will constitute this system of records will be to obtain alcohol consumption data (1) reported by the volunteers using a self-administered questionnaire, and (2) recalled consumption data obtained by direct, in-person interview.

NIAAA will later evaluate the questions for use in a supplement to the 1983 National Health Interview Survey (NHIS) and the Hispanic Health and Nutrition Examination Survey (HHANES). These surveys are conducted by the National Center for Health Statistics (NCHS) pursuant to 42 U.S.C. 242k. The purpose of the system will not be to develop a body of data on alcohol consumption; rather NIAAA will analyze the response data to determine the quality of the questions themselves. Within the Department of Health and

Human Services (DHHS) nonidentifiable data will be given to NCHS because that agency is responsible for NHIS and HHANES. NIAAA is coordinating all stages of this study, and will make eventual recommendations to NCHS.

NIAAA has provided for thorough protection of the records. We will require the contractor to set up physical safeguards, as described in the system notice, to protect the security, confidentiality, and integrity of the records. For example, only authorized contractor staff will have access to personally-identified information. The contractor staff will code and transfer the data without personal identifiers, to computer tapes as soon as they have accomplished all followup and validation activities specified by the study design. The contractor will provide to NIAAA only computer tapes of the individual records that have been stripped of personal identifiers, and aggregated statistical summaries, tables, and analyses. The contractor will destroy the original forms, coding sheets, and cross-reference list. We believe that these safeguards will be sufficient to protect the record contents from inadvertent disclosures.

We propose routine uses that are compatible with the purpose of the system. One routine use would permit disclosure to a congressional office upon a record subject's written request for such disclosure to the congressional office, which is in compliance with the Privacy Act. The second routine use would permit disclosure to a contractor performing functions necessary to accomplish the purpose of the system.

Dated: May 19, 1982.

Wilford J. Forbush,
Deputy Assistant Secretary for Health
Operations and Director, Office of
Management.

09-30-0045

SYSTEM NAME:

Respondents in a Validity/Reliability Study of Self-Reported Drinking, HHS/ADAMHA/NIAAA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

CSR, Incorporated, 805 15th Street NW., Suite 500, Washington, DC 20005.
Parklawn Computer Center, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adult volunteers selected in Baltimore, Maryland; Chicago, Illinois; and Greensboro, North Carolina.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms collected during the period from approximately May 1 to June 30, 1982, containing: (1) Personal history, such as age, date of birth, education, race, national origin, sex, marital status; and (2) information on drinking experience, such as type and amount of alcoholic beverage(s) consumed, reasons for not drinking, frequency of consumption, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 4591, section 501 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.

PURPOSE(S):

The system will contain individuals' responses to questions on alcohol consumption. The National Institute on Alcohol Abuse and Alcoholism (NIAAA) will evaluate the questions for use in a supplement to the 1983 National Health Interview Survey (NHIS) and the Hispanic Health and Nutrition Examination Survey (HHANES). The purpose of the system will *not* be to develop a body of data on alcohol consumption; rather, NIAAA will analyze the response data to determine the quality of the questions. Within the Department of Health and Human Services (DHHS), nonidentifiable information will be transmitted to the National Center for Health Statistics (NCHS) because that agency is responsible for NHIS and for HHANES.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from a congressional office made at the written request of that individual.

2. The contractor may make disclosures either to other ADAMHA contractors or to any of its subcontractors in the conduct of the study and in the preparation of scientific reports in order to accomplish the research purpose for which the records are collected. Such recipients will be required under contract provision to maintain Privacy Act safeguards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be on paper as data collection forms, computer coding sheets, and a cross-reference list, and will be maintained in file folders.

Records will also be on computer tapes, temporarily identified by number only. (See section 4 below for retention and disposal procedures).

RETRIEVABILITY:

The contractor will index and retrieve records by name of respondent. The contractor will assign a unique identification number to each individual's record to track it through coding, keypunching, and processing; and will maintain a separate name/number cross-reference list until contractor staff has completed computer processing.

SAFEGUARDS:

The safeguards listed below are consistent with the guidelines in the DHHS General Administration Manual, Chapters 45-13 and PHS.hf:45-13; and with the DHHS ADP Systems Manual, Part 6, "ADP Systems Security."

Physical Security:

The contractor will store paper records in metal cabinets with cipher locks in offices that will be locked when unattended. Federal Government employees will maintain *unidentified* data on computer tapes in accordance with the established security measures of the Parklawn Building. (The computerized records will be identified temporarily by number, but the contractor will retain the name/number cross-reference list.)

Technical Security:

Computerized records are password protected. When the record identification numbers are no longer needed, a computer edit routine to delete the numbers will be used so that records will no longer be traceable to specific individuals.

Administrative Security:

The contractor will specifically train staff interviewers to maintain the confidentiality of the nature of the data they will be collecting. Subjects' participation in the study will be voluntary. Subjects will read and sign informed consent forms which cite the Privacy Act and describe the subsequent routine use(s) which may be made of the data before contractor staff collects any information. The contractor will provide to NIAAA individual records in computer tapes, stripped of personal identifiers. Only authorized contractor staff will have access to personally identified data, including the name/number cross-reference list. Contractor staff will destroy paper records so that remaining computerized

records will not be personally identifiable. In addition, personally identifiable data disclosed to other ADAMHA contractors or to any of its subcontractors in the development of scientific reports in conjunction with the intent of the research study will be required under contract provision to be protected by the safeguard procedures noted above.

RETENTION AND DISPOSAL:

Contractor staff will destroy original forms, computer coding sheets, and the cross-reference list by shredding; and will use a computed edit routine to eliminate the unique identification numbers on the computerized records as soon as they have completed the transfer of data to computer tapes. We expect this to occur not later than 60 days after completion of the data collection phase of the study. Remaining records will not be personally identifiable.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Validity/Reliability Study of Self-Reported Drinking, National Institute on Alcohol Abuse and Alcoholism, 5600 Fishers Lane, Room 16C-16, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact the contractor: Project Manager, Validity/Reliability Study of Self-Reported Drinking, CSR, Incorporated, 805 15th Street NW., Suite 500, Washington, DC 20005.

Requesters should provide verifiable proof of identity—such as notarized original signature—for mail requests, inquiries, and responses; or driver's license with picture for in-person inquiries and requests.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address above and reasonably identify the record, specify the information being contested, and state the corrective action being sought.

RECORD SOURCE CATEGORIES:

The subject individuals are the sole source of the information in the records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 82-14240 Filed 5-26-82; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A 71 WR]

Arizona; Proposed Continuation of Withdrawal and Opportunity for Public Hearing

May 20, 1982.

In accordance with the provisions of section 204 of the Federal Land Policy and Management Act, the Bureau of Land Management, Department of the Interior, is reviewing possible continuation of an existing mineral withdrawal made by Public Land Order No. 4469 of June 27, 1968. The following land is included in the proposed continuation:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 1 E.,

Sec. 4, lots 1 to 4, incl. SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{4}$;

Sec. 5, lots 1, 3, and 4, S $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 6, lots 1 and 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 7, E $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 8, W $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 9, N $\frac{1}{4}$, SE $\frac{1}{4}$, N $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 15, SW $\frac{1}{4}$;

Sec. 17, W $\frac{1}{4}$, S $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 20, N $\frac{1}{4}$;

Sec. 21.

T. 7 N., R. 1 E.,

Sec. 22, S $\frac{1}{4}$;

Sec. 23, SW $\frac{1}{4}$;

Sec. 27,

Sec. 31, lots 1 to 4, incl., E $\frac{1}{4}$ W $\frac{1}{4}$, E $\frac{1}{4}$;

Sec. 33.

T. 4 N., R. 6 E.,

Sec. 30, E $\frac{1}{4}$, E $\frac{1}{4}$ W $\frac{1}{4}$;

Sec. 31, lots 1 to 4, incl., E $\frac{1}{4}$ W $\frac{1}{4}$, E $\frac{1}{4}$.

The areas described aggregate 6,859.02 acres in Maricopa County.

The Bureau proposes continuation of the withdrawal in its entirety for a period of 20 years. The purpose of the withdrawal is to protect valuable public park and recreation values within the Lake Pleasant Regional Park and the McDowell Mountain Park. The surface of the land is in State and County ownership; the mineral estate is in U.S. ownership and is segregated from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

On or before August 1982, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for public hearing is

afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposed continuation must submit a written request for a hearing to the undersigned officer. If the State Director, in his discretion, determines that a public hearing is justified, a notice will be published in the *Federal Register* giving the time and place of such hearing. The public hearing will be scheduled and conducted in accordance with BLM Manual 2351.16B.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for, and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the *Federal Register*. The existing withdrawal will continue until such final determination is made.

All communications in connection with the withdrawal continuation should be addressed to the undersigned, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

Dated: May 18, 1982.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82-14461 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

[C-16210, C-18254]

Colorado; Cancellation of Forest Service Withdrawal Applications and Opening of Lands

May 18, 1982.

The U.S. Department of Agriculture filed withdrawal applications as listed below:

1. Application C-16210 filed April 27, 1972, was published in the *Federal Register* on June 21, 1972, as FR Doc. 72-9347 and on January 5, 1978, as FR Doc.

78-115. Several sites in this application were cancelled and opened previously.

New Mexico Principal Meridian Rio Grande National Forest

Agua Ramon Electronic Site

T. 40 N., R. 3 E.,

Sec. 12: SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$.

Grayback Mountain Electronic Site

T. 37 N., R. 4 E.,

Sec. 9: SW $\frac{1}{4}$ SE $\frac{1}{4}$

Sec. 16: N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

Ivy Creek Campground

T. 40 N., R. 1 W.,

Sec. 32: N $\frac{1}{2}$ NE $\frac{1}{4}$.

Ute Creek Trailhead

T. 40 N., R. 4 W.,

Sec. 5: Lot 4

Sec. 6: Lot 1.

T. 41 N., R. 4 W.,

Sec. 31: Lot 15

Sec. 32: SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate approximately 290 acres.

2. Applicant C-18254 filed January 13, 1975, was published in the **Federal Register** on June 3, 1975, as FR Doc. 75-14477 and on July 15, 1975, as FR Doc. 75-18291.

Sixth Principal Meridian Arapaho National Forest

Upper Snake River Watershed

T. 6 S., R. 76 W.,

Sec. 1: Lots 5, 6, 7, 10, 11, 12, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$

Sec. 11: Lot 16

Sec. 12: NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$,

SW $\frac{1}{4}$ SW $\frac{1}{4}$

Sec. 13: Lot 2

Sec. 14: Lot 1.

The areas described aggregate approximately 1,100.41 acres.

By letters of May 4, 1982, the applicant agency has cancelled these applications in their entirety.

Therefore, in accordance with the regulations contained in 43 CFR 2310.2-1(c) at 10:00 a.m. on June 28, 1982, the lands described above shall be relieved of the segregative effect of the applications and open to such forms of appropriation as may by law be made of National Forest land, subject to any valid existing rights.

Any questions concerning these lands should be addressed to the undersigned at the Bureau of Land Management, Colorado State Office, 1037-20th Street, Denver, Colorado 80202.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 82-14459 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial No. I-7317]

Idaho; Partial Termination of Proposed Withdrawal and Reservation of Lands

May 20, 1982.

Notice of an application, serial No. I-7317, for withdrawal and reservation of lands was posted in the Land Office records September 27, 1973. A notice was not published in the **Federal Register**. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be, at 7:45 a.m. on July 1, 1982, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

St. Joe River—St. Joe National Forest, Boise Meridian

T. 45 N., R. 1 E.,

Sec. 1.

T. 46 N., R. 1 E.,

Sec. 21;

Sec. 23;

Sec. 24;

Sec. 25;

Sec. 26;

Sec. 27.

T. 45 N., R. 2 E.,

Sec. 4;

Sec. 5.

T. 46 N., R. 2 E.,

Sec. 30.

T. 45 N., R. 3 E.,

Sec. 7;

Sec. 8;

Sec. 9;

Sec. 10;

Sec. 12;

Sec. 15.

T. 45 N., R. 4 E.,

Sec. 8;

Sec. 10;

Sec. 12;

Sec. 14;

Sec. 19.

T. 45 N., R. 5 E.,

Sec. 7;

Sec. 8;

Sec. 9;

Sec. 10;

Sec. 11;

Sec. 12;

Sec. 13;

Sec. 14;

Sec. 16;

Sec. 18.

T. 45 N., R. 6 E.,

Sec. 13;

Sec. 14;

Sec. 15;

Sec. 18;

Sec. 19;

Sec. 20;

Sec. 21;

Sec. 22;

Sec. 23;

Sec. 24;

Sec. 28.

T. 45 N., R. 7 E.,

Sec. 19;

Sec. 20;

Sec. 21;

Sec. 22;

Sec. 27;

Sec. 28;

Sec. 29;

Sec. 30;

Sec. 34;

Sec. 35;

Sec. 36.

T. 43 N., R. 8 E.,

Sec. 1.

T. 44 N., R. 8 E.,

Sec. 4;

Sec. 5;

Sec. 6;

Sec. 8;

Sec. 9;

Sec. 10;

Sec. 11;

Sec. 13;

Sec. 14;

Sec. 15;

Sec. 23;

Sec. 24;

Sec. 25;

Sec. 26;

Sec. 36.

T. 45 N., R. 8 E.,

Sec. 31.

T. 42 N., R. 9 E.,

Sec. 1;

Sec. 2;

Sec. 5;

Sec. 6;

Sec. 7;

Sec. 8;

Sec. 9;

Sec. 10;

Sec. 11;

Sec. 12;

Sec. 15;

Sec. 16;

Sec. 17;

Sec. 18.

T. 43 N., R. 9 E.,

Sec. 5;

Sec. 6;

Sec. 7;

Sec. 8;

Sec. 17;

Sec. 20;

Sec. 21;

Sec. 25;

Sec. 28;

Sec. 29;

Sec. 30;

Sec. 31;

Sec. 32;

Sec. 36.

T. 44 N., R. 9 E.,

Sec. 31.

T. 42 N., R. 10 E.,

Sec. 1;

Sec. 6;

Sec. 12.

T. 43 N., R. 10 E.,

Sec. 17;

Sec. 19;

Sec. 20;

Sec. 21;

Sec. 22;

Sec. 26;

Sec. 27;

Sec. 28;
 Sec. 29;
 Sec. 30;
 Sec. 31;
 Sec. 35;
 Sec. 36.
 T. 42 N., R. 11 E.,
 Sec. 4;
 Sec. 5;
 Sec. 6;
 Sec. 7.
 T. 43 N., R. 11 E.,
 Sec. 32;
 Sec. 33.

The area described aggregates 32,960 acres in Benewah and Shoshone Counties.

Thomas M. Woodward,
 Acting Chief, Branch of L&M Operations.

[FR Doc. 82-14462 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

Utah; Environmental Impact Statement

AGENCY: Bureau of Land Management, Moab District, Utah.

ACTION: Grand Resource Area, Utah; Resource Management Plan/Environmental Impact Statement.

SUMMARY: Notice is hereby given that, pursuant to section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, a Resource Management Plan/Environmental Impact Statement (RMP/EIS) is being prepared for the Grand Resource Area.

The Grand Resource Area contains about 1.5 million acres of public land located in southeastern Utah, including all of Grand County and the northern third of San Juan County.

The planning issues to be addressed in the Grand Resource Area RMP/EIS are: critical watersheds, livestock requirements, wildlife habitat requirements, off-road vehicle use and management, lands disposal, utility corridors, minerals, recreation, fire management, and wilderness. The planning issues and their associated planning criteria have undergone extensive revision since the start of the planning action, which was announced in the *Federal Register* on February 4, 1980.

The RMP/EIS will be prepared by an interdisciplinary team which consists of the following: a planning coordinator, a soil conservationist, a wildlife management biologist, an outdoor recreation planner, a lands specialist, a geologist, two range conservationists, a hydrologist, and an economist.

PUBLIC PARTICIPATION: Public participation is being sought as a part of the scoping process. Public workshops will be held on June 30, 1982 at 1 p.m.

and 7 p.m. in the Moab District Office, 125 West 200 South, Moab, Utah.

Copies of the revised planning issues and criteria may be requested from the Grand Resource Area Manager at the address given below. The Grand Resource Area Management Situation Analysis, which is relevant to the planning effort, may be examined Monday through Friday between the hours of 7:45 a.m. and 4:30 p.m. at the Grand Resource Area Office, located on Sand Flats Road in Moab. Persons who have suggestions or comments on the formulation of management alternatives or other aspects of the RMP/EIS process should submit them to the Area Manager by June 30, 1982.

FOR FURTHER INFORMATION CONTACT:

Colin P. Christensen, Area Manager, Grand Resource Area, P.O. Box M, Moab, Utah 84532, or call (801) 259-6111.

Gene Nodine,
 District Manager.

[FR Doc. 82-14460 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

Wyoming; Modification of Coal Land Use Planning Decisions in the Big Sandy and Salt Wells Management Framework Plans

AGENCY: Bureau of Land Management (BLM), Interior, Rock Springs, Wyoming District Office, Big Sandy and Salt Wells Resource Areas.

ACTION: Notice.

SUMMARY: The following planning decision modifications are the result of BLM's consideration of protests, submitted under the provisions of 43 CFR 1601.6-1(c), to planning decisions by the Rock Springs District Manager, that about 280 acres were unsuitable for surface mining under coal unsuitability criterion #2 (Big Sandy Area) and about 3,500 acres were unsuitable for surface mining under criterion #15 (Salt Wells Area). These modifications do not result in expanding the scope of any resource use or the scope of considerations covered by the management framework plans (MFP's). Therefore, this action is determined to be refinement of the MFP decisions (43 CFR 1601.6-3(a)) and not subject to the requirements for plan amendments (43 CFR 1601.6-3(b)).

Decision number 1, part a, on page 5 of the public brochure, *Coal-Wyoming Land Use Decisions, Big Sandy Area, Rock Springs District*, published on November 13, 1981, is modified as follows:

a. About 32,134 (vice 31,854) acres containing approximately 159 (vice 157.6) million tons of coal are acceptable

for coal development by surface mining methods.

Decision number 1 on page 5 of the public brochure, *Coal-Wyoming Land Use Decisions, Salt Wells Area, Rock Springs District*, published on November 13, 1981, is modified to add part d as follows:

d. About 3,500 acres and approximately 16 million tons of coal in the area known as Cooper Ridge have been determined to be acceptable for further consideration for coal development by surface mining methods, pending studies to determine the extent and importance of potential critical deer winter range in the area and the extent and significance of coal mining impacts on the area. The Federal coal areas involved will be carried forward into the current coal activity planning process and considered under the following conditions:

(1) The decision as to the unsuitability or acceptability for coal development will be deferred until the deer studies are completed.

(2) If a potential coal lease tract(s) can be delineated to include *only* the coal areas under study, the areas will be considered through the remainder of the coal activity planning process. *Should* the final decision be that the areas are partially or wholly acceptable for coal development by surface mining methods and, if a viable lease tract(s) remains intact, the acceptable areas will be considered for leasing as soon as possible thereafter. If a viable lease tract does not exist when the final planning decision is made, the acceptable areas will be handled as stated in paragraph (3) below.

(3) If a potential coal lease tract(s) cannot be delineated to include *only* the coal areas under study, the areas will be given no further consideration, as lease tracts, in the current coal activity planning process. *Should* the final planning decision be that the areas are partially or wholly acceptable for coal development by surface mining methods, the acceptable areas will be (a) considered for leasing under the provisions for emergency leases or lease modifications; or (b) lacking any interest in emergency or modification leasing, they will be deferred for consideration in the next coal planning and leasing cycle.

DATE: The subject planning decision modifications are effective May 27, 1982.

ADDRESSES: Inquiries on this notice should be placed with: Donald Sweep, District Manager, BLM, Rock Springs District, P.O. Box 1869, Rock Springs, Wyoming 82901, (307) 382-5350.

FOR FURTHER INFORMATION CONTACT:

Clinton Hanson, Big Sandy Area Manager, or
Robert Bierer, Salt Wells Area Manager, at
BLM, Rock Springs District, P.O. Box 1869, Rock Springs, Wyoming 82901, (307) 382-5350, or
Joseph Patti, Jr., Bureau of Land Management (930), P.O. Box 1828, Cheyenne, Wyoming 82001, (307) 772-2090

SUPPLEMENTARY INFORMATION: The protest concerning application of coal unsuitability criterion #2 in the Big Sandy Area involves a concentration of transmission line rights-of-way. In reviewing the original unsuitable determination, BLM concluded that it was inconsistent with relocation provisions for the same rights-of-way on adjacent private lands and would be impracticable should relocation occur on the private lands. Accordingly, the 280 acres (described below) will fall under the general provisions for criterion #2, as stated on page 13 of the Big Sandy final coal management planning decisions brochure, to wit:

The 280 acre in question is acceptable for coal development subject to valid existing rights and negotiations for relocating (the rights-of-way), if necessary, appropriate stipulations, and consistency with current planning and management decisions. Any unforeseen conflicts in the area should be identified and resolved during the coal activity planning process or in mining and reclamation plan development.

Legal Description

T. 20 N., R. 101 W.
Section 26: NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

The protest concerning application of coal unsuitability criterion #15 in the Salt Wells Area involves Federal lands in the area known as Cooper Ridge, which were originally determined to be unsuitable for surface coal mining due to critical deer winter range. This determination was substantially based upon the interest of the State of Wyoming in protecting high value wildlife species habitat and wildlife resource data provided by the State. In considering the protest, BLM reentered consultation with the Wyoming Game & Fish Department and the Office of the Governor of Wyoming to review the technical adequacy of all data and to assure that all regulatory and procedural requirements were followed in arriving at the original determination. It was concluded, with the opinion of the Governor's Office, that there is apparently insufficient information concerning the critical deer winter range and that the unsuitable determination on about 3,500 acres (described below)

should be changed to acceptable pending study.

Legal Description

T. 17 N., R. 101 W.
Section 4: E $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$
Section 18: SW $\frac{1}{4}$, E $\frac{1}{4}$
T. 18 N., R. 101 W.
Section 34: N $\frac{1}{2}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$
T. 15 N., R. 102 W.
Section 8: E $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 20: W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{4}$ NW $\frac{1}{4}$
T. 16 N., R. 102 W.
Section 10: NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 20: E $\frac{1}{4}$
Section 28: NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ W $\frac{1}{2}$
Section 32: W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{4}$ E $\frac{1}{4}$
T. 17 N., R. 102 W.
Section 24: E $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$
Section 26: SE $\frac{1}{4}$

F. William Eikenberry,
Associate State Director.

[FR Doc. 82-14463 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

[CA-10284]**Conveyance of Public Land; San Bernardino County, Calif.**

May 20, 1982.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), Frank L. Hammond and Ora P. Hammond, Post Office Box 152, Sun City, California 92381, have purchased by noncompetitive sale public land in San Bernardino County, California, described as:

San Bernardino Meridian, California

T. 5 N., R. 7 W.
Sec. 34, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;
Containing 5 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Mr. and Mrs. Hammond.

Harold R. Dietz,
Acting Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 82-14486 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

[CA 10493]**Conveyance of Public Land; Tuolumne County, Calif.**

May 20, 1982.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), Frank A. Logoluso and Betty Logoluso, 7567 Road 28, Madera, California 93637, have purchased by competitive sale public land in Tuolumne County, California, described as:

Mount Diablo Meridian, California

T. 2 N., R. 14 E.,
Sec. 2 NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Containing 10 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Mr. and Mrs. Logoluso.

Harold R. Dietz,
Acting Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 82-14487 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service**National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Meeting**

AGENCY: Minerals Management Service, Pacific OCS Office, Interior.

ACTION: National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Notice and Agenda for Meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Pacific Regional Technical Working Group Committee of the National OCS Advisory Board is scheduled to meet from 9 a.m., to 4:00 p.m., June 22, 1982, at the Federal Building, 300 North Los Angeles St., Room 8544, Los Angeles, California.

The Agenda for the meeting covers the following topics: (a) Identification and clarification of issues and alternatives for the proposed OCS Lease Sale No. 73 EIS; (b) FY 1984 Regional Environmental Studies Plan; and (c) achievements of Fisheries Concerns Subcommittee. A detailed agenda will be available June 14, 1982.

The meeting is open to the public. Interested persons may make oral or written presentations to the committee. Such requests should be made no later than June 9, 1982, to: Ellen Aronson, Pacific OCS Office, 1340 West Sixth Street, Room 200, Los Angeles, California 90017 (213/668-6758). Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for public inspection and copying at the following locations:
Pacific OCS Office, 1340 West Sixth St., Room 200, Los Angeles, CA 90017 and
Division of Offshore Resources (BLM 620), Department of the Interior, 18th

and C Sts, NW, Room 2505,
Washington, D.C. 20240

Dated: May 19, 1982.

William E. Grant,
Manager, Pacific OCS Office.

[FR Doc. 82-14465 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-84-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3065, Block A-90, Mustang Island Area, offshore Texas.

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 Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service 3301 North Causeway Blvd., room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North 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 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 18, 1982.

Lowell G. Hammons,
Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-14466 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Union Oil Co. of California

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production Plan.

SUMMARY: Notice announces that Union Oil Company of California, Unit Operator of the Vermilion Block 14 Federal Unit Agreement No. 14-08-0001-12339, submitted on May 14, 1982, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Vermilion Block 14 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 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North 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 20, 1982.

Lowell G. Hammons,
Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-14467 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Georgia O'Keeffe National Historic Site Rio Arriba County, N. Mex.; Draft Proposal/Environmental Assessment for the General Management Plan/Development Concept Plan

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, and Part 516 of the Departmental Manual, the National Park Service has

prepared a Draft Proposal/Environmental Assessment for the General Management Plan/Development Concept Plan for Georgia O'Keeffe National Historic Site, Rio Arriba County, New Mexico.

The Draft Proposal/Environmental Assessment for the General Management Plan/Development Concept Plan contains a proposal for the future management of the Georgia O'Keeffe National Historic Site and an alternative to that proposal to preserve for the benefit and enjoyment of future generations significant properties associated with the life and cultural achievements of Georgia O'Keeffe.

The Draft Proposal/Environmental Assessment for the General Management Plan/Development Concept Plan are available for review in the Office of the Superintendent, Bandelier National Monument, Los Alamos, New Mexico 87544; and the Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, New Mexico. Copies of the document may be obtained, upon request, from Bandelier National Monument, at the address provided above.

Anyone wishing to provide comments on the Draft Proposal/Environmental Assessment for the General Management Plan/Development Concept Plan should provide them to the Superintendent, Bandelier National Monument, Los Alamos, New Mexico 87544, on or before June 28, 1982.

Dated: May 12, 1982.

Donald A. Dayton,
Regional Director, Southwest Region.

[FR Doc. 82-14474 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-70-M

Ice Age National Scenic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Ice Age National Scenic Trail Advisory Council will be held June 29, 1982, beginning at 9:00 a.m. in the Ice Age Nature Center at the northern unit of Kettle Moraine State Forest located on State Highway 67 south of Dundee, Wisconsin.

The council was established on January 9, 1981, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1244, to meet and consult with the Secretary of the Interior on matters relating to the administration

and development of the Ice Age National Scenic Trail.

The members of the council are as follows:

Mr. Bill W. Dean (Chairperson)
Mr. David Weizenicker
Mr. John C. Wolter
Mrs. Grace Schmidley
Mr. John Zillmer
Mr. Robert W. Cromer
Honorable Warren P. Knowles

Matters to be discussed at the meeting will include review of a draft Comprehensive Plan for Management and Use of the Ice Age National Scenic Trail, verification of the trail route, administration of the trail, and marking the trail with an official National Trails System marker.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Robert P. Martin, Chief, Division of Rivers and Trails, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221-3371 (FTS 864-3371). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 4 weeks after the meeting.

Dated: May 18, 1982.

J. L. Dunning,

Regional Director Midwest Region.

[FR Doc. 82-14473 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 14, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 11, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

ARKANSAS

Columbia County

Magnolia, Longino, Dr. H. A. House, 317 W. Main St.

Washington County

Fayetteville, Jackson House, 1500 Mission Hwy. (AR 45)

CALIFORNIA

Alameda County

Berkeley, Garfield Intermediate School, 1414 Walnut St.

COLORADO

Larimer County

Loveland, Colorado and Southern Railway Depot, 405 Railroad Ave.

CONNECTICUT

Fairfield County

Bridgeport, Seaside Institute, 299 Lafayette Ave.

Fairfield, Birdcraft Sanctuary, 314 Unquowa Rd.

Hartford County

Hartford, Hartford Seminary Foundation, 55 Elizabeth St. and 72-120 Sherman St.

New Haven County

Waterbury, Abbott, George S., Building (Wheeler and Wilson Building), 235-247 N. Main St.

Waterbury, Webster School, Easton Ave. at Aetna St.

Waterbury, Wilby High School, 280 Grove St.

Windham County

Willimantic, Willimantic Freight House and Office, Bridge St.

KANSAS

Douglas County

Lawrence, Taylor, Lucy Hobbs, Building, 809 Vermont.

Franklin County

Ottawa, Taub Jones Hall, Ottawa University Campus 10th and Cedar Sts.

Montgomery County

Coffeyville, Terminal Building, 717 Walnut

Sedgwick County

Wichita, Clapp, L. W. House, 1847 Wellington Pl.

Wichita, Munger, Darius Sales, House, Sim Park

Wichita, Occidental Hotel, 300 N. Main St.

LOUISIANA

Orleans Parish

New Orleans, Pessou House, 6018 Benjamin St.

MISSISSIPPI

Marion County

Columbia, Keys Hill Historic District, Broad St.

Oktibbeha County

Starville, Greensboro Street Historic District, Greensboro St.

NEBRASKA

Lancaster County

Lincoln, Royer-Williams House, 407 N. 28th St.

NEW YORK

Oneida County

Clinton, Clinton Village Historic District, North, South, East, West Park Rows, Marvin, Williams, Chestnut, Foundation, College and Utica Sts.

Westchester County

Tarrytown, Patriots' Park, US 9

NORTH CAROLINA

Buncombe County

Black Mountain vicinity, Black Mountain College Historic District, SR 2468

Cabarrus County

Mount Pleasant, Lentz Hotel, College St.

Guilford County

Hillsdale, Hillsdale Brick Store, NC 150 and SR 2347

Halifax County

Enfield vicinity, Branch, Samuel Warren, House, NC 481

Jackson County

Cashiers vicinity, Fairfield Inn, U.S. 64

Johnston County

Selma, Nowell-Mayerburg-Oliver House (Selma, North Carolina MRA) 312 W. Anderson St.

Selma, Selma Graded School (Selma, North Carolina MRA) W. Richardson St.

Selma, Selma Historic District (Selma, North Carolina MRA) 301

Selma, Smith, William E., House Selma, North Carolina MRA) 309 W. Railroad St.

Selma, Stevens, Everitt P., House (Selma, North Carolina MRA) SR 1003

Selma, Union Station (Selma, North Carolina MRA) E. Railroad St.

Pender County

Hampstead vicinity, Belvidere Plantation House, Off SR 1565

Rutherford County

Forest City, vicinity, Ledbetter, Dexter James, House, Off US 74

Wilson County

Saratoga vicinity, Scarborough, Maj. James, House, NC 22

Wilson, Davis-Whitehead-Harriss House, 600 W. Nash St.

OREGON

Benton County

Corvallis, Pi Beta Phi Sorority House, 3002 NW Harrison Blvd.

Clackamas County

Canby, Macksburg Lutheran Church, 10210 S. Macksburg Rd.

Klamath County

Klamath Falls, Winthrow-Melhase Block, 4th and Main Sts.

Multnomah County

Portland, Ayer-Shea House, 1809 NW Johnson St.

SOUTH DAKOTA*Yankton County*

Yankton, Yankton Historic Commercial District, Roughly bounded by 2nd, 4th, Pine and Broadway Sts.

VIRGINIA*Roanoke (ind. city)*

First National Bank, 101 S. Jefferson St.

WISCONSIN*Marathon County*

Wausau, Miller, Henry, House, 1314 Grand Ave.

[FR Doc. 82-14480 Filed 5-26-82; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION**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) 275-7328

Volume No. OP1-88

Decided: May 18, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 2900 (Sub-455), filed May 10, 1982. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S.E. Somers, Jr. (same address as applicant), (904) 353-3111. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with the Ford Motor Company, of Dearborn, MI.

MC 30521 (Sub-3), filed May 10, 1982. Applicant: H & L BLOOM, INC., 427 Cohannet St., Taunton, MA 02780. Representative: Arthur M. White, 281 Pleasant St., P.O. Box 2547, Framingham, MA 01701, (617) 879-5000. Over regular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, between Springfield and Buzzards Bay, MA, from Springfield over Interstate Hwy 291 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction U.S. Hwy 20, then over U.S. Hwy 20 to junction MA Hwy 146, then over MA Hwy 146 to junction MA Hwy 122A, then over MA Hwy 122A

to junction MA Hwy 122, then over MA Hwy 122 to Woonsocket, RI, then over RI Hwy 122 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction MA Hwy 152, then over MA Hwy 152 to Attleboro, MA, then over MA Hwy 123 to junction MA Hwy 140, then over MA Hwy 140 to Taunton, MA, then over U.S. Hwy 44 to junction MA Hwy 28, then over MA Hwy 28 to junction U.S. Hwy 6, then over U.S. Hwy 6 to Buzzards Bay, MA, and return over the same route, serving all intermediate points and serving Middleboro and Wareham, MA, as off-route points.

MC 33970 (Sub-29), filed May 13, 1982. Applicant: GEORGE HILDEBRANDT, INC., R.D. #4, Hudson, NY 12534. Representative: Michael R. Werner, 241 Cedar Lane, Teaneck, NJ 07666, (201)-836-1144. Transporting *general commodities* (except classes A and B explosives, household goods commodities in bulk), between points in CT, DE, MA, MD, ME, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and DC.

MC 35831 (Sub-32), filed May 12, 1982. Applicant: E. A. HOLDER, INC., P.O. Box 69, Kennedale, TX 76060. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103 (817) 332-4718. Transporting *building materials*, between points in AR, LA, NM, OK and TX.

MC 55790 (Sub-3), filed May 10, 1982. Applicant: MILLER TRUCK LINE, INC., P.O. Box 1100, Winnemucca, NV 89445. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701, (702) 882-5649. Transporting *construction materials and supplies*, between points in NV, CA, OR, WA, ID, CO, UT, AZ, and NM.

MC 64501 (Sub-9), filed April 27, 1982. Applicant: UNITED TRANSPORTATION COMPANY OF RHODE ISLAND, Mohawk Drive (P.O. Box 787), Leominster, MA 01453. Representative: Mary E. Kelley, 22 Sterns Ave., Medford, MA 02155, (617)-396-4090. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in MA, NH, RI, ME, VT, CT, NY, NJ, and PA.

MC 87231 (Sub-30), filed April 20, 1982, and previously noticed in *Federal Register* issue of May 7, 1982. Applicant: BAY & BAY TRANSFER CO., INC., 7200 West 128th St., Savage, MN 55378. Representative: Pamela N. Merkle, 300 Roanoke Bldg., Minneapolis, MN 55402, (612) 343-2978. Transporting *silica sand*, between points in MN and WI, on the

one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This republication shows MN in lieu of MI as an origin or destination point.

MC 95350 (Sub-9), filed May 7, 1982. Applicant: R. W. JONES TRUCKING COMPANY, P.O. Drawer T, Vernal, UT 84078. Representative: Thomas M. Zarr, 455 South Third East, Salt Lake City, UT 84111. Transporting (1) *Mercer commodities*, (2) *machinery, materials, equipment, and supplies* used in, or in connection with the discovery, development, production, extraction, and preservation of oil shale and the construction, dismantling, operating, processing, repressuring, and blending of oil shale, natural gas, gasoline, and petroleum, and (3) *commodities* used in, or in connection with the discovery, development, and production of geothermal and nuclear power, between points in UT, on the one hand, and, on the other, points in OR and WA.

Note.—Applicant intends to tack this authority with its existing authority.

MC 98950 (Sub-5), filed May 7, 1982. Applicant: S. S. BERTZ & SONS, INC., 226 West Lemon Street, Lancaster, PA 17603. Representative: Edward N. Button, 635 Oak Hill Avenue, Hagerstown, MD 21740, (301) 739-4860. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Baltimore, and points in Washington County, MD, PA, and DC, on the one hand, and, on the other, points in PA.

MC 102181 (Sub-14), filed May 10, 1982. Applicant: O.H. & F., INC., P.O. Box 129, Grayville, IL 62844. Representative: Richard Elliott (same address as applicant) (618) 375-2911. Transporting *Mercer commodities*, between points in IL, IN, KY, MI, MS, MO, NE, NY, OH, PA, TN, and WV, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, MD, NJ, NC, RI, SC, and VA.

MC 113751 (Sub-56), filed May 7, 1982. Applicant: HAROLD F. DUSHEK, INC., 10th & Columbia Street, Waupaca, WI 54981. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719, (608) 273-1003. Transporting *pulp, paper and related products*, between those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 125751 (Sub-12), filed May 13, 1982. Applicant: H & W CARRIERS, INC., P.O. Box 130, Camargo, IL 61919. Representative: Harold D. Smith (same address as applicant), (217)-832-2111. Transporting *general commodities*, (except classes A and B explosives and household goods), between points in AL,

AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, MA, NE, NJ, NY, NM, NC, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, WY and NH.

MC 129410 (Sub-31), filed May 6, 1982. Applicant: BONCOSKY TRANSPORTATION, INC., 1301 Industrial Drive, Algonquin, IL 60102. Representative: Carl L. Steiner, 29 South LaSalle Street, Chicago, IL 60603, (312) 236-9375. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 130390 (Sub-1), filed May 5, 1982. Applicant: PEOPLES TRAVEL AGENCY, INC., 302 North Kansas, Liberal, KS 67901. Representative: Doris Engel, (same address as applicant), (316)-624-7261. As a *broker*, at Liberal, KS, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, between points in Seward, Haskell, Wallace, Stanton, Cimarron, Wichita, Stevens, Ford, Pawnee, Kearney, Finney, Comanche, Kiowa, Meade, Grant, Clark, Scott and Pratt Counties, KS; Texas, Dewey, Beaver, Major, Ellis and Garfield Counties, OK; Otero, Pueblo and Baca Counties, CO and Ochiltree County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 140411 (Sub-3), filed May 7, 1982. Applicant: D. & W. FORWARDERS, INC., 81 Orenda Rd., Brampton, Ontario, Canada, L6W 1V7. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI, (313) 349-3980. Transporting *building materials*, between points in WI, IL, MI, IN, OH, WV, NY, PA, MD, DE, NJ, VT, NH, CT, RI, MA, and ME, on the one hand, and, on the other, the ports of entry on the international boundary line between the United States and Canada in MI, NY, VT, NH, and ME.

MC 141961 (Sub-7), filed May 6, 1982. Applicant: CARMAN CARRIER, INC., P.O. Box 2139, Clarksville, IN 47130. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6655. Transporting *glass products*, between points in the U.S. (except AK and HI), under continuing contract(s) with TFC, Inc., of Louisville, KY.

MC 141961 (Sub-9), filed May 13, 1982. Applicant: CARMAN CARRIER, INC., P.O. Box 2139, Clarksville, IN 47130. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317)-846-6655. Transporting *such commodities as are dealt in by manufacturers of soap, cleaning products and toilet articles*, between points in the U.S., under continuing

contract(s) with Colgate Palmolive Company, of Jeffersonville, IN.

MC 142120 (Sub-6), filed May 13, 1982. Applicant: LENZNER COACH LINES, INC., d.b.a. NORTH BOROUGH CAB, Mt. Nebo Rd., R.D. #2 Sewickley, PA 15143. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, (412)-471-1800. Transporting *passengers and their baggage*, in the same vehicle with passengers, between points in the U.S., under continuing contract(s) with C & J Travel & Leasing, Inc., of Sewickley, PA.

MC 143500 (Sub-20), filed May 12, 1982. Applicant: R.B. CARRIERS, INC., 305 S. Missouri Ave., P.O. Box 942, Jeffersonville, IN 47130. Representative: Dean N. Wolfe, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301)-840-8565. Transporting *such commodities as are dealt in or used by manufacturers of rubber, plastic, and chemical products*, between points in the U.S. (except AK and HI), under continuing contract(s) with BF Goodrich Company, of Akron, OH.

MC 143730 (Sub-10), filed May 10, 1982. Applicant: PENINSULA TRUCKING CO., INC., 705 Morehouse Drive, New Castle, DE 19270. Representative: Richard M. Ochroch, 316 South 16th St., Philadelphia, PA 19102, (215)-735-2707. Transporting *such merchandise as is dealt in by wholesale, retail, and chain drug and pharmaceutical business houses*, between points in the U.S. (except AK and HI), under continuing contract(s) with Hillcrest Sales, of Clinton, MD.

MC 144630 (Sub-65), filed April 8, 1982. Applicant: STOOPS EXPRESS, INC., P.O. Box 287, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6655. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Eli Lilly and Company, of Indianapolis, IN, IVAC Corporation, of San Diego, CA, Elizabeth Arden, Inc., of New York, NY, Cardiac Pacemakers, Inc., of St. Paul, MN, and Physio-Control Corporation, of Redmond, WA.

MC 146251 (Sub-2), filed May 6, 1982. Applicant: CLAXTON TRANSPORT, INC., Route 3, Box 135, Wrightsville, GA 31096. Representative: Ronald K. Kolins, Suite 3100, One IBM Plaza, Chicago, IL 60611, (312) 467-9300. Transporting *wire, and tire beads*, between points in Telfair County, GA, on the one hand, and, on the other, points in AL, AR, IA, IL, KY, MS, NY, NC, OH, OK, SC, TN, TX, VA, and WI.

MC 146251 (Sub-2), filed May 13, 1982. Applicant: RIGHT-O-WAY, INC., 57 St. Charles St., Newark, NJ 07105. Representative: Ronald I. Shapes, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Transporting *general commodities* except classes A and B explosives, household goods and commodities in bulk, between points in CA., CT, GA, NJ, NY, IL, SC and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146890 (Sub-45), filed May 11, 1982. Applicant: C & E TRANSPORT, INC. d.b.a. C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue NW., Suite 500, Washington, DC 20006, (202) 828-5015. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Foremost-McKesson, Inc., of San Francisco, CA.

MC 147400 (Sub-10), filed May 6, 1982. Applicant: RAEMARC, INC., 1903 Chicory Road, Racine, WI 53405. Representative: William D. Brejcha, 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601, (312) 263-1600. Transporting *food and related products, and restaurant supplies*, between points in the U.S. (except AK and HI), under continuing contract(s) with Distron Division of the Burger King Corporation, of Miami, FL.

MC 148791 (Sub-22), filed May 6, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. Transporting *salt and salt products, and building materials*, between points in the U.S., under continuing contract(s) with Domtar Industries, Inc., Sifto Salt Division, of Schiller Park, IL.

MC 148791 (Sub-24), filed May 6, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 521-1777. Transporting *plastic pellets, plastic powder, and chemicals*, between points in the U.S., under continuing contract(s) with Dow Chemical Corporation U.S.A., Louisiana Division, of Plaquemine, LA.

MC 150451 (Sub-4), filed May 7, 1982. Applicant: G & L TRANSPORT, Route 9, Troy, ME 04987. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike Vienna, VA 22180, (703) 442-8330. Transporting (1) *such commodities as are dealt in or used by manufacturers of reinforced gum tape*, between points in

the U.S. (except AK and HI), under continuing contract(s) with Keena Corporation, of Brunswick, ME; and (2) *such commodities as are dealt in or used by tanneries*, between points in the U.S. (except AK and HI), under continuing contract(s) with Tannin Corporation, of Peabody, MA.

MC 150461, filed May 6, 1982. Applicant: DONALD WILSON, d.b.a. WILSONS HOT SHOT SERVICE, 1015 So. Willow, Casper, WY 82604. Representative: Donald Wilson (same address as applicant), (307) 237-5574. Transporting *machinery, materials, equipment and supplies* used in, or replacing, servicing and repairing machinery and equipment used in or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and by products, between points in WY, on the one hand, and, on the other, points in OK, CO, ND, SD, MT, UT, NE, ID, KS, TX, and NM.

MC 152620 (Sub-9), filed March 12, 1982, previously published in the **Federal Register** on April 8, 1982. Applicant: CUSTOMIZED TRANSPORTATION, INC. P. O. Box 40083, Jacksonville, FL 32203. Representative: John W. Carter (same address as applicant), (904) 733-6011. Transporting *general commodities* except classes A and B explosives, household goods and commodities in bulk, between points in the U.S. (except AK and HI), under continuing contract(s) with General Foods Corporation, of White Plains, NY, and its subsidiaries, General Foods Manufacturing Corporation and Birds Eye, Inc., each of White Plains, NY and Oscar Mayer and Co., Inc., of Madison, WI.

Note.—This republication indicates the correct contracting shippers.

MC 152730 (Sub-18), filed May 3, 1982. Applicant: DEPENDABLE TRANSIT, INC., P.O. Box 349, County Road 300 South, Hartford City, IN 47348-0349. Representative: Larry Garrett, (same address as applicant), (317) 348-0051. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 152921 (Sub-1), filed May 7, 1982. Applicant: HOU-TEX TRANSPORTATION, INC., P.O. Box 38591, Houston, TX 77088. Representative: Clayte Binion, 623 South Henderson, 2nd Floor, Fort Worth, TX 76104, (817) 332-4415. Transporting *Mercer commodities*, between points in AL, AZ, AR, CA, CO, FL, GA, KS, LA,

MS, MO, MT, NE, NV, NM, ND, OK, SD, TX, UT, and WY.

MC 152950 (Sub-4), filed May 11, 1982. Applicant: CENTURY TRANSPORTATION CORPORATION, P.O. Box 207, Columbus, MS 39701. Representative: Lloyd R. Pate, (same address as applicant), (601) 329-2121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Pepsi Cola Bottling Company, of Tupelo, MS, Artex International, Inc., of Highland, IL, Knouse Foods, Inc., of Peach Glen, PA, Dutch Oil Company, of Columbus, MS, Greater Toronto Food Broker, LTD., of Mississauga, Ontario, Canada, Beneke Corporation, of Columbus, MS, and Kerr Glass Manufacturing Corporation, of Sand Springs, OK.

MC 154121 (Sub-19), filed May 3, 1982. Applicant: TRAILINER CORP., 2169 E. Blaine, Springfield, MO 65803. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435-7140. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 156550 (Sub-1), filed May 13, 1982. Applicant: JERRY NICHOLAS d.b.a. QUICK TRANSFER COMPANY, 8415 East Gilbert, Wichita, KS 67207. Representative: William B. Barker, P.O. Box 1979, Topeka, KS 66601, (913) 234-0565. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in KS and OK.

MC 157750 (Sub-1), filed May 3, 1982. Applicant: TENNESSEE OHIO EXPRESS, INC., P.O. BOX 171066, Nashville, TN 37217. Representative: Roland M. Lowell, 5th Floor, 501 Union St., Nashville, TN 37219, (615) 255-0540. Over regular routes, transporting *general commodities* (except classes A and B explosives), between Cincinnati, OH and Atlanta, GA (A) over Interstate Hwy 75, serving all intermediate points, and (B) from Cincinnati over Interstate Hwy 75 to junction Interstate Hwy 71, then over Interstate Hwy 71 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Atlanta and return over the same route, as an alternate route for operating convenience only.

Note.—Applicant intends to tack this authority with its existing regular route authority.

MC 158181 (Sub-1), filed May 10, 1982. Applicant: ALUMINUM EXPRESS, INC., 333 Rocky Fork Dr., N.E., Newark, OH 43055. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215, (614) 228-8575. Transporting *rubber and plastic products, machinery, and metal products*, between points in Richland County, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 159421, filed May 7, 1982. Applicant: BROADWAY TRANSPORT, INC., 3310 Quebec Street, Dallas, TX 75247. Representative: Richard J. Bara, 1155 Sherman Street, Suite 315, Denver, CO 80203, (303) 831-7272. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AR, CO, KS, LA, MO, MS, NM, OK, and TX.

MC 161721, filed May 13, 1982. Applicant: JOHN S. POCOCK AND RALPH R. POCOCK, d.b.a. POCOCK FARMS, Rt. 1, Sugar City, ID 83448. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343-3071. Transporting (1) *chemicals*; (2) *coal*; and (3) *minerals*, between points in ID, MT, NV, OR, UT, WA and WY, on the one hand, and, on the other, points in ID, UT and WY.

MC 161791, filed May 3, 1982. Applicant: H. W. ASHLIN & SONS, INC., Weston St., Randolph, VT 05060. Representative: Albert J. Cirone, Jr., 23 Bank St., Lebanon, NH 03786, (603) 448-1330. Transporting *such commodities as are dealt in by manufacturers and distributors of stoves, home furnishings and wood products*, (1) between points in the U.S. (except AK and HI), under continuing contract(s) with Vermont Castings, Inc. and Branchwood, Inc., each of Randolph, VT; and (2) between points in Bethel and Randolph, VT, on the one hand, and, on the other, ports of entry on the International Boundary line between the U.S. and Canada, under a continuing contract(s) with Vermont Castings, Inc. and Branchwood, Inc., each of Randolph, VT.

MC 161840, filed May 4, 1982. Applicant: RANSOM REFRIGERATED FREIGHTWAYS, INC., 40 Johnson Avenue, Cranford, NJ 07016. Representative: E. Stephen Heisley, 1919 Pennsylvania Avenue, NW, Suite 500, Washington, DC 20006, (202) 828-5015. Transporting (1) *building materials*, between points in Union County, NJ, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, GA, and FL; and (2) *food and related products*, between points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE,

MD, VA, WV, NC, and SC, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 161841, filed May 4, 1982. Applicant: PRMMI TRUCKING, INC., 30 Maritime and Faragate Sts., Jacksonville, FL 32203. Representative: Morris R. Garfinkle, 1054 Thirty-first St., N.W., Washington, DC 20007, (202)-342-5200. Transporting *general commodities* (except classes A and B explosives), between (1) Elizabeth, NJ; (2) Baltimore, MD; (3) Charleston, SC; (4) Jacksonville, FL; (5) Miami, FL; (6) New Orleans, LA; and (7) Houston, TX, restricted to traffic having a prior or subsequent movement by water in (1) through (7) above.

MC 161871, filed May 7, 1982. Applicant: EAGLE CHARTERS, 499 East Proctor St., Wilmington, CA 90744. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108, (415) 986-8696. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, beginning and ending at points in Los Angeles County, CA, and extending to points in the U.S. (including AK but excluding HI).

MC 161920, filed May 10, 1982. Applicant: SIX STATES ASSN., 1611 West County Rd. B, P.O. Box 43557, St. Paul, MN 55164. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612)-333-1341. Transporting *construction materials* (except commodities in bulk), between points in the U.S., under continuing contract(s) with Great Plains Supply Co., a Division of Farmers Union Grain Terminal Association, of St. Paul, MN.

MC 161940, filed May 11, 1982. Applicant: CARL'S TOUR & TRAVEL, INC., PO Box 427, Decorah, IA 52101. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Edina, MN 55424, (612) 927-8855. As a *broker*, at Decorah, IA, in arranging for the transportation of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in MN and IA and extending to points in the U.S. (including AK and HI).

MC 161950, filed May 10, 1982. Applicant: SDS TRANSPORT CO., INC., 381 Quincy Ave., Quincy, MA 02169. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617)-742-3530. Transporting *food and related products*, between points in CA, CO, FL, GA, IL, MA, MI, MN, MO, NJ, NY, NC, OH, OR, PA, TN, TX, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162000, filed May 14, 1982. Applicant: RPC TRANSPORTATION, INC., P.O. Box 1124, Elkhart, IN 46515. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 So. Second St., Elkhart, IN 46515, (219) 293-3597. 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 Riblet Products Corporation, and its subsidiaries and divisions, of Elkhart, IN.

Volume No. OP 2-106

Decided: May 13, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 58902 (Sub-23), filed April 27, 1982. Applicant: MANLEY TRUCK LINE, INC., P.O. Box 1575 SSS, Springfield, MO 65806. Representative: A. J. Whisler, (same address as applicant), 417-865-2800. Over *regular routes*, transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk) (1), between Little Rock and Searcy, AR, over U.S. Hwy 67, serving all intermediate points and off-route points in Lonoke and White Counties, AR, (2) between Little Rock and Pine Bluff, AR, over U.S. Hwy. 65, serving all intermediate points and off-route points in Jefferson and Grant Counties, AR, and (3) serving points in Nowata, Osage, Pawnee, and Hughes Counties, OK, as off-route points in connection with applicant's otherwise authorized regular route authority.

Note.—This authority may be tacked with existing authority.

MC 105902 (Sub-32), filed May 5, 1982. Applicant: PENN YAN EXPRESS, INC., 100 West Lake Road, Penn Yan, NY 14527. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312, (703) 750-1112. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OH.

MC 135243 (Sub-7), filed April 30, 1982. Applicant: WISPAK TRANSPORT, INC., 4700 North 132nd St., P.O. Box 304, Butler, WI 53007. Representative: Richard A. Westley, 4506 Regent St. Suite 100, P.O. Box 5086, Madison, WI 53705-0086, 608-238-3119. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with (a) Wisconsin Packing Co., of Butler, WI, (b) New Glarus Foods, Inc., of New Glarus, WI, and (c) Justro Feed Corp.,

Milwaukee Tallow Co., Inc., and Carrie Shortening Corp., all of Milwaukee, WI.

MC 139852 (Sub-6), filed May 3, 1982. Applicant: E. C. BLACK, d.b.a. BLACK TRUCKING COMPANY, Route 1, York, SC 29745. Representative: Joseph M. Epting, 1338 Main St., Suite 900, P.O. Box 11414, Columbia, SC 29211, (803) 799-9427. Transporting *metal products*, between points in Iredell County, NC, on the one hand, and, on the other, points in GA, SC, NC and TN.

MC 141962 (Sub-4), filed April 13, 1982. Applicant: NORTHEAST REFRIGERATED DISTRIBUTING CO., INC. 1650 Shawshen St., Tewksbury, MA 01876. Representative: Joseph M. Klements, 89 State Street, Boston, MA 02109, (617) 523-0800. Transporting *food and related products*, between points in MA, CT, VT, and ME.

Note.—Applicant intends to tack this authority with its existing authority in MC-141962 Sub-No. 3, between MA, RI, and NH.

MC 143720 (Sub-20), filed April 15, 1982. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66105. Representative: Donald J. Quinn, Commerce Bank Bldg., 8901 State Line-Suite 232, Kansas City, MO 64114, (816) 444-7474. Transporting *foodstuffs*, between points in the U.S., under a continuing contract(s) with Banquet Foods Corporation, of Ballwin, MO.

MC 144603 (Sub-18), filed April 12, 1982. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry, (same address as applicant), (314) 291-3030. Transporting *textile mill products*, between points in Guadalupe County, TX, and Spalding County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152523 (Sub-3), filed April 9, 1982. Applicant: ARLO G. LOTT, TRUCKING, P.O. Box 174, Arco, ID 83213. Representative: Arlo G. Lott, (same address as above) (208) 527-3429. Transporting *lumber and wood products*, between points in the U.S., (except AK and HI), under continuing contract (s) with Capital Lumber Company, of Phoenix, AZ.

MC 153553 (Sub-3), filed April 20, 1982. Applicant: ROCKINGHAM CARRIAGE SERVICE, INC., Rte. #1 Bypass, P.O. Box 1349, Portsmouth, NH 03801. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181 617-235-5571 Transporting *motor vehicles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Federal Express Corporation, of Memphis, TN.

MC 153683, filed May 3, 1982. Applicant: BPD LEASE, INC., P.O. Box 303, Sheridan, MI 48884. Representative: Joseph A. Farhat, III, 417 Seymour Ave., Lansing, MI 48933. Transporting (1) *building materials and supplies*, (2) *such commodities as are dealt in by distributors of hardware, roofing, siding, and insulation and (3) lumber and wood products*, between points in the U.S., under continuing contract(s) with Big L Corporation, of Sheridan, MI.

MC 153773, filed April 13, 1982. Applicant: NDC TRUCKING COMPANY, P.O. Box 7364, Longview, TX 75061. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255-6279. Transporting *petroleum and coal tar products (except in bulk)*, between Los Angeles, CA, and points in Boone County, AR, Warren County, MS, Oklahoma County, OK, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159142 (Sub-1), filed April 12, 1982. Applicant: C AND C TRANSPORTATION, 6275 E. 39th Ave., Denver, CO 80207. Representative: John J. Pearson, (same address as applicant), (303) 320-5511. Transporting (1) *malt beverages and related advertising materials* (2) *empty used beverage containers and such commodities as are dealt in or used by breweries*, between points in Jefferson County, CO, and points in AZ, CA, IA, ID, MT, and WA.

MC 161432, filed April 9, 1982. Applicant: CAROLINA TOURS, Route 3, Box 121, Lexington, SC 29072. Representative: Ingrid C. Long, (same address as applicants), (803) 359-6842. To operate as a *broker*, at Lexington, SC, to arrange for the transportation, by motor vehicle, of *passengers and their baggage*, between points in SC, on the one hand, and, on the other, points in the U.S.

MC 161482, filed April 13, 1982. Applicant: F & J GRAIN & COAL, R.R. #2, Box 143, Washington, IN 47501. Representative: Walter F. Jones, Jr., 1111 E. 54th St., Indianapolis, IN 46220, (317) 257-4066. Transporting *lime and dry fertilizer*, between Chicago and Danville, IL, Delphi, Indianapolis, Burns Harbor, and Mount Vernon, IN, Hannibal, MO and Louisville, KY and points in Tippecanoe and Cass Counties, IN, on the one hand, and, on the other, points in IN, IL, KY and OH.

MC 161782, filed April 30, 1982. Applicant: JOHN B. VERBLE, d.b.a., TRI-CITY COACH TOURS, P.O. Box 2191, Johnson City, TN 37601. Representative: John B. Verble, (address same as applicant), (615) 929-1010. To operate, as a *broker*, at Johnson City, TN, in arranging for the transportation, by

motor vehicle, of *passengers and their baggage*, beginning and ending at points in Carter, Green, Sullivan, Unicoi, and Washington Counties, TN, and extending to points in the U.S.

MC 161792, filed April 30, 1982. Applicant: JOHN R. AND JEANETTE P. NOBLITT, d.b.a., EXPRESS MOBILE HOME TRANSPORT, 4075 Boulder Hwy., Las Vegas, NV 89121. Representative: Drake De Lanoy, 302 East Carson Ave., Suite 1000, Las Vegas, NV 89101, (702) 385-3373. Transporting *mobile homes*, between points in NV, CA, UT and AZ.

MC 161802, filed May 3, 1982. Applicant: TEXAS GULFWESTERN TRUCK LINE, INC., P.O. Box 923, Friendswood, TX 77546. Representative: Paul D. Angenend, P.O. Box 2207, 1806 Rio Grande, Austin, TX 78768, (512) 476-6391. Transporting *Mercer commodities*, between points in AR, CO, LA, MS, MT, ND, NM, OK, SD, TX, and WY.

MC 161803, filed May 3, 1982. Applicant: ADM TOURS, INC., 4007 West Points Loma Blvd., San Diego, CA 92110. Representative: Roger Curtis McKee, 5030 Camino de la Siesta, Suite 305, San Diego, CA 92108, (714) 296-5051. To operate as a *broker*, at San Diego, CA, in arranging for transportation, by motor vehicle, of *passengers and their baggage*, beginning and ending in San Diego, Orange, Imperial, San Bernardino and Los Angeles Counties, CA, and Maricopa and Yuma Counties, AZ, and extending to points in the U.S.

MC 161832, filed May 4, 1982. Applicant: FUN TOURS, INC., 1805 Norview Avenue Norfolk, VA 23518. Representative: Paul A. Elmore, 5249 Cape Henry Avenue, Norfolk, VA 23513, (804) 853-8202. Transporting *passengers and their baggage*, in special and charter operations, beginning and ending at points in VA, and extending to points in the U.S. (including AK, but excluding HI).

Volume No. OP3-080

Decided: May 21, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 52574 (Sub-67), filed May 13, 1982. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th St., Irvington, NJ 07111. Representative: Edward F. Bowes, Seven Becker Farm Rd., P.O. Box Y, Roseland, NJ 07068, (201) 992-2200. Transporting *general commodities (except classes A and B explosives, household goods, and commodities in bulk)*, between points in the U.S. (except AK and HI), under continuing contract(s) with A. Lechter

Co., of Union, NJ, I. Lehrhoff & Co., of Newark, NJ, I. P. Container Corp., of Paterson, NJ, Jersey Tab Card, of Union, NJ, Dean Floor Covering Co., of Wharton, NJ, and Mary Proctor Tables Corp., of Baltimore, MD.

MC 109515 (Sub-19), filed May 10, 1982. Applicant: OZELLA HARRINGTON, P.O. Box 604, Benson, AZ 85602. Representative: Lex J. Smith, 363 N. First Ave., Phoenix, AZ 85003, (602) 262-8811. Transporting *liquid and dry fertilizers*, between points in Imperial County, GA, Graham, Cochise, Pinal, Pima and Maricopa Counties, AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Arizona Agrochemical Company, of Phoenix, AZ.

MC 114604 (Sub-130), filed May 13, 1982. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, State Farmers Market #33, Forest Park, GA 30050. Representative: Paula S. Davis, (same address as applicant), (404) 361-9170. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 116045 (Sub-55), filed May 14, 1982. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlins, WY 82301. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80265, (303) 861-4028. Transporting *commodities in bulk*, between points in AZ, CO, ID, MT, NE, NV, NM, SD, UT, and WY.

MC 127535 (Sub-6), filed May 14, 1982. Applicant: TROY NEWS COMPANY, INC., 274 Second St., P.O. Box 388, Troy, NY 12181. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202, (315) 472-8845. Transporting (1) *printed matter*, between points in NY, on the one hand, and, on the other, points in CT, MA, NH, PA, RI, and VT; and (2) *agricultural implements*, between points in Rensselaer and Saratoga Counties, NY, on the one hand, and, on the other, points in CT, MA, NH, PA, RI, and VT.

MC 133154 (Sub-15), filed May 10, 1982. Applicant: BELL TRANSPORT COMPANY, 14000 E. 183rd St., La Palma, CA 90623. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210, (503) 226-3755. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Superior Transportation Systems, Inc., of Wilsonville, OR.

MC 140104 (Sub-12), filed May 6, 1982. Applicant: TOLEDO FRIGID LINES, INC., 4060 Fitch Rd., Toledo, OH 43613. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215, (614) 464-4103. Transporting *such commodities as are dealt in or used by manufacturers and distributors of food and related products*, between points in the U.S. (except AK and HI).

MC 140484 (Sub-109), filed May 13, 1982. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Frank T. Day (same address as applicant), (813) 334-4517. Transporting *such commodities as are dealt in or used by wholesale, retail, and chain grocery and food business houses*, between points in MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143374 (Sub-4), filed May 11, 1982. Applicant: DURBIN TRANSPORT, INC., 17683 Oakmont Avenue, Gaithersburg, MD 20877. Representative: H. Neil Garson, 3251 Old Lee Highway, #400, Fairfax, VA 22030, (703) 840-8487. Transporting *food and related products*, between Atlanta, GA, Chicago, IL, Dallas, TX, Denver, CO, Kansas City, KS, Los Angeles, CA, Portland, OR, Syracuse, NY, points in MD, MI, and AL, on the one hand, and, on the other, points in AL, DE, FL, GA, IL, IN, KY, MI, MS, NJ, NC, NY, OH, PA, SC, TN, VA, WV and DC.

MC 148665 (Sub-6), filed May 14, 1982. Applicant: CFS CONTINENTAL TRANSPORTATION COMPANY, 2550 North Clybourn Ave., Chicago, IL 60614. Representative: Leonard R. Kofkin, 140 South Dearborn St., Suite 1515, Chicago, IL 60603, (312) 580-2210. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with ITOFCA, Inc., of Downers Grove, IL.

MC 157705 (Sub-1), filed May 14, 1982. Applicant: ELDEN RUETER TRUCKING, INC., Rte. #3, Box 254, Centralia, IL 62801. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703, (217) 528-8476. Transporting *general commodities* (except household goods and classes A and B explosives), between points in MO, IA, WI and IN, on the one hand, and, on the other, points in Clinton, Marion, and Washington Counties, IL.

MC 161265, filed May 17, 1982. Applicant: H. B. G. TRUCKING CO., 24105 Pierce, Southfield, MI 48075. Representative: Henry B. Gavins (same address as applicant), (313) 559-7459. Transporting *couplings and oil well parts*, between Detroit, MI and points in

OH, IN, IL, KY, TN, MS, LA, AR and TX, under continuing contract(s) with Clipper International Corp., of Detroit, MI.

MC 161525, filed May 14, 1982. Applicant: SUPALLA TRUCKING CO., Route 2, Box 194, New Richland, MN 56072. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927-8855. Transporting *such commodities as are used in the production of agricultural commodities*, between points in the U.S. (except HI), under continuing contract(s) with Huntting Elevator Co., of Austin, MN.

MC 161644, filed May 13, 1982. Applicant: HOUSTON MARINE SERVICES, INC., 505 Atrium One, 11811 I-10 East, Houston, TX 77029. Representative: Stephanie N. Josephson, 1818 Coastal Tower, Nine Greenway Plaza, Houston, TX 77046, (713) 961-9045. Transporting *petroleum products*, between points in TX and LA, under continuing contract(s) with Shell Oil Company, and BP North America Trading, Inc., both a Delaware Corporation, of Houston, TX.

MC 161714, filed April 28, 1982. Applicant: TYGARD EQUIPMENT COMPANY, INC., 101 E. Carson St., Pittsburgh, PA 15219. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219-2838, (412) 471-1800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with 84 Lumber Company, of Eighty-Four, PA.

Volume No. OP4-186

Decided: May 19, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

MC 1017 (Sub-3), filed May 14, 1982. Applicant: SWAN TRUCKING CORP., 3433 Holyoke Rd., Philadelphia, PA 19114. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966, (215) 357-7220. Transporting (1) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Thos. D. Richardson Co., division of Beatrice Foods, of Philadelphia, PA, and (2) *such commodities as are dealt in or used by automotive retail stores*, between points in the U.S. (except AK and HI), under continuing contract(s) with Pep Boys, of Philadelphia, PA.

MC 89697 (Sub-37), filed May 14, 1982. Applicant: KRAJACK TANK LINES, INC., 480 E. Westfield Ave., Roselle Park, NJ 07204. Representative: Morton

E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048-0640, (212) 466-0220. Transporting *such commodities* as are dealt in or used by refiners and manufacturers of petroleum products and chemicals, between points in the U.S., under continuing contract(s) with Shell Oil Co., of Houston, TX.

MC 111617 (Sub-11), filed May 14, 1982. Applicant: O'NEILL TRANSFER COMPANY, INC., 2215 NW. 22d Place, Portland, OR 97210. Representative: David C. White, 2400 SW. Fourth Ave., Portland, OR 97201, (503) 226-6491. Transporting *furniture, fixtures and related products*, between points in CA, OR and WA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, OR, UT, and WA.

MC 126477 (Sub-12), filed April 1, 1982, previously noticed in the *Federal Register* issue of April 20, 1982, and republished this issue. Applicant: JET AIR FREIGHT & PARCEL DELIVERY, INC. P.O. Box 9313, Baer Field, Fort Wayne, IN 46899. Representative: James P. Kirkhope, P.O. Box 15296, Fort Wayne, IN 46885, (219) 422-8884. 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 American Shippers, Inc., of Fort Wayne, IN. Condition: A grant of authority is condition upon the receipt from applicant of an explanation why the proposed operations are not prescribed by 49 U.S.C. § 11323, which limits the ownership and control of other carriers by freight forwarders. A similar condition has been applied to MC 143229 Sub-6 and MC 147262, which carriers share this relationship with applicant.

MC 129537 (Sub-68), filed May 3, 1982. Applicant: REEVES TRANSPORTATION CO., Rt. 5, Dew's Pond Rd., Calhoun, GA 30710. Representative: John C. Vogt, Jr., 406 N. Morgan St., Tampa, FL 33602, (813) 229-6165. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 160217, filed May 14, 1982. Applicant: DASH MESSENGER SERVICE, INC., 541 W. Roosevelt Rd., Chicago, IL 60607. Representative: William H. Taylor, (same address as applicant), (312) 243-0987. Transporting *printing ink and printed matter*, between points in IL, on the one hand, and, on the other, points in IN, IA, MO, OH, and WI.

MC 161997, filed May 14, 1982. Applicant: PACIFIC INDEPENDENT

MOTOR EXPRESS, INC., 17114 Shadow Ct., Milwaukee, OR 97222.

Representative: Lawrence V. Smart, Jr., 419 N.W. 23d Ave., Portland, OR 97210, (503) 226-3755. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OR, WA, NV, and CA.

MC 152097 (Sub-1), filed May 14, 1982. Applicant: UNITED CONTRACT CARRIER, INC., P.O. Box 355, Rocky Hill, CT 06067. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728-0700. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Caldor, Inc., of Norwalk, CT, Frem Corporation, of Worcester, MA, and Benjamin Finkelstein, Inc., of Webster, MA.

Volume No. OP5-114

Decided: May 19, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 41098 (Sub-79), filed May 12, 1982. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, D.C. 20006, (202) 833-8884. Transporting *household goods* between points in the U.S., under continuing contract(s) with Ex-Cell-O Corporation, of Troy, MI.

MC 118159 (Sub-382), filed May 19, 1982. Applicant: DISTRIBUTION SERVICE SYSTEMS, INC., 2961 Interstate St., Unit 2, Charlotte, NC 28208. Representative: Charles W. Singer, P.O. Box 2298, Green Bay, WI 54306, (414) 4907-2201. 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 The Mead Corporation of Dayton, OH.

MC 123978 (Sub-5), filed May 10, 1982. Applicant: RICHEY & STEWART, INC., P.O. Box 235, Scottsburg, IN 47170. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317-846-6655. Transporting (1) *pulp, paper and related products*, and (2) *printed matter*, between points in the U.S., (except AK and HI), under continuing contract(s) with Bowater Computer Forms, Inc. of Plano, Tx.

MC 133589 (Sub-5), filed May 11, 1982. Applicant: BCT, INC., P.O. Box 7219, Boise, ID 83707. Representative: James R. Daly (same address as applicant), 208-384-7230. Transporting *paint, liquid cement, and adhesives*, between points

in the U.S. (except AK and HI), under continuing contract(s) with Speciality Chemicals Company, Inc. and Speciality Coatings Company both of Elk Grove Village, IL.

MC 138308 (Sub-149), filed May 12, 1982. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, (601) 948-8820. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 146438 (Sub-16), filed May 10, 1982. Applicant: ETV, INC., P.O. Box 391, Comstock Park, MI 49321. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226, (313) 962-6492. Transporting *frozen food* between Montgomery, AL, and points in Berrien County, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146729 (Sub-16), filed May 10, 1982. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 4525 Irving Blvd., Dallas, TX 75247. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, 214-358-3341. Transporting *chemicals and related products*, between points in TX, on the one hand, and, on the other, points in NY, NJ, DE, OH, PA, MO, CA, KS, VA, IL, and AL.

MC 147318 (Sub-12), filed May 10, 1982. Applicant: DEEP SOUTH TRUCKING, INC., P.O. Box 304, Purvis, MS 39475. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, 601-948-8820. 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 Kuhlman Electric Company of Crystal Springs, MS.

MC 151039 (Sub-2), filed May 10, 1982. Applicant: CABARRUS CONSOLIDATING AND MANAGEMENT COMPANY, P.O. Box 1212, Concord, NC 28025. Representative: John N. Fountain, P.O. Box 2246, Raleigh, NC 27602, (919) 828-0731. Transporting *foods and related products* between points in FL, LA, NY, and TX, on the one hand, and, on the other, Birmingham, AL, and points in Cabarrus County, NC.

MC 152688 (Sub-1), filed May 6, 1982. Applicant: CHEMICAL DISPOSAL, INC., P.O. Box 397, Rillito, AZ 85246. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014, (602) 264-4891. Transporting *hazardous wastes* between points in AZ on the one

hand, and, on the other, points in AZ, CA, OR, WA, ID, UT, CO, NM, TX, and NV. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(a) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority, please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 5, Room 6370.

MC 154009 (Sub-1), filed May 2, 1982. Applicant: EAST COAST CONSOLIDATORS, P.O. Box 188, (Mt. Royal Plaza), Paulsboro, NJ 08066. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 0722, (201) 946-2020. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S. (except AK and HI).

MC 158129 (Sub-5), filed May 10, 1982. Applicant: REGAL TRANSPORTATION, INC., P.O. Box 310, Niles, OH 44446. Representative: A. Charles Tell, 100 E. Broad St., Suite 1800, Columbus, OH 43215, 614-228-1541. Transporting *metal products*, between points in MA, OH, and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161479 (Sub-1), filed May 11, 1982. Applicant: B & P TRANSPORTATION CO., INC., 4086 Viscount, Memphis, TN 38118. Representative: Tommie J. Perkins, Sr. (same address as applicant), 901-362-2868. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, LA, MS, and TN, under continuing contract(s) with Southern Warehouses, Inc. of Memphis, TN.

MC 161569 (Sub-1), filed May 11, 1982. Applicant: TRANSPORT CONTRACTORS, INC., 2206 Frankfort Ave., Louisville, KY 40206. Representative: Taylor O. Cowan III, 6408 Clinton Hwy., Knoxville, TN 37912, 615-938-5001. Transporting *plastic and plastic products*, between points in Posey County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with General Electric Corporation of Mt. Vernon, IN.

MC 161939, filed May 11, 1982. Applicant: C.A.C. TRANSPORT, INC., 14023 West Hardy, Houston, TX 77060. Representative: C. W. Ferebee, 3910 FM 1960 W., Suite 106, Houston, TX 77068, 713-537-8156. Transporting (1) *Mercer commodities*, and (2) *earth drilling equipment*, between points in AL, AR,

AZ, CA, CO, FL, LA, MS, MT, NM, ND, OK, TX, UT, and WY.

MC 161948, filed May 10, 1982. Applicant: CLUSIAU'S RANGE DRIVE-UR-SELF SERVICE, INC., East Hwy 37, P.O. Box 688, Hibbing, MN 55746. Representative: David C. Lingren, 124 Ave. C, Cloquet, MN 55720, 218-879-3331. Transporting *passengers and their baggage in the same vehicle with passengers*, in special and charter operations, between points in St. Louis, Itasca, and Koochiching Counties, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161968, filed May 12, 1982. Applicant: RAY HALEY TRUCKING, 7301 Bridge Lane, Redding, CA 96001. Representative: Jim Pitzer, 15 S. Grady Way, Suite 321, Renton, WA 98055-3273, 206-235-1111. Transporting (1) *lumber and wood products*, and (2) *chemicals and related products*, between points in CA, NV, OR, and WA.

Volume No. OP5-116

Decided: May 19, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

FF-599, filed May 13, 1982. Applicant: OHIO FREIGHT FORWARDERS, INC., 8841 Timberlink Rd., N.W., Canal Fulton, OH 44614. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005, 202-783-3525. As a freight forwarder of *general commodities* (except used household goods, unaccompanied baggage, used automobiles, and classes A and B explosives), between points in Ashland, Ashtabula, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Delaware, Erie, Fairfield, Franklin, Geauga, Guernsey, Harrison, Holmes, Huron, Jefferson, Knox, Lake, Licking, Lorain, Mahoning, Marion, Medina, Morrow, Muskingum, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne Counties, OH, on the one hand, and, on the other, Philadelphia, PA, Baltimore, MD, and points in Bronx, Kings, New York, Queens, Richmond, Westchester, Nassau and Suffolk counties, NY; Bergen, Hudson, Passaic, Essex, Union, Morris, Middlesex, Monmouth, and Somerset Counties, NJ.

MC 65019 (Sub-11), filed May 14, 1982. Applicant: BEATRICE MOTOR EXPRESS, INC., 123 Court Street, Beatrice, NE 68310. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501, (402) 475-6761. Transporting *general commodities* (except household goods, classes A and B explosives, and commodities in bulk), between points in Gage County, NE, on the one hand, and,

on the other, points in AR, MI, MS, NE, and PA.

MC 133189 (Sub-44), filed December 14, 1981, previously published republication, in *Federal Register* on January 11, 1982. Applicant: VANT TRANSFER, INC., 1257 Osborne Road, Minneapolis, MN 55432. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101, (612) 291-1215. Transporting *general commodities* (except household goods and commodities in bulk) between Duluth, MN, on the one hand, and, on the other, points in AR, CO, IA, IL, IN, KY, MI, MO, NE, ND, NM, OH, SD, TX, WI, and WY.

Note.—Purpose of republication is to show Arkansas in place of Alaska.

MC 134689 (Sub-8), filed May 13, 1982. Applicant: LA ROSA DEL MONTE EXPRESS, INC., 1133-1135 Tiffany St., Bronx, NY 10459. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, 212-838-0600. Transporting (1) *household goods*, and (2) *furniture and fixtures*, between points in CT, MA, NH, NJ, NY, PA, and RI.

MC 136818 (Sub-142), filed May 13, 1982. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 5601 W. Mohave, Phoenix, AZ 85031. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008, 602-275-3124. Transporting (1) *building materials*, and (2) *lumber and wood products*, between points in the U.S. (except AK and HI).

MC 140619 (Sub-5), filed May 13, 1982. Applicant: AMAC TRUCKING, INC., 5950 Sixth Ave., South, Seattle, WA 98108. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566-5639. 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 Terminal Freight Cooperative Association of Downers Grove, IL.

MC 146729 (Sub-17), filed May 14, 1982. Applicant: JAMES S. HELWIG & ALLEN L. GRIMLAND, d.b.a. H & G LEASING, 4525 Irving Blvd., Dallas, TX 75247. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, 214-358-3341. Transporting *machinery*, between points in TX, on the one hand, and, on the other, points in CA, GA, IN, IL, NJ, FL, MN, WI, and TN.

MC 149308 (Sub-24), filed May 14, 1982. Applicant: VICTORY FREIGHTWAY SYSTEM, INC., P.O. Box P, Sellersburg, IN 47170. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846-6655.

Transporting (1) *clay, concrete, glass or stone products*, and (2) *chemicals and related products* (a) between Chicago, IL and St. Louis, MO, (b) between points in Santa Barbara County, CA, on the one hand, and, on the other, St. Louis and Kansas City, MO, and Denver, CO, and (c) between points in Davidson County, TN, on the one hand, and, on the other, St. Louis and Kansas City, MO.

MC 152008 (Sub-2), filed May 13, 1982. Applicant: CASE ENTERPRISES, INC., 322 Cedar Springs Rd., Athens, TN 37303. Representative: M. C. Ellis, c/o Chattanooga Freight Bureau, Inc., 1001 Market St., Chattanooga, TN 37402, (615) 756-3620. Transporting (1) *chemicals and related products* under continuing contract(s) with Dycho Chemical Co., Inc., of Niota, TN, (2) *plastic products* under continuing contract(s) with Southern Petrochemical Co., of Roswell, GA, (3) *paper and related products* under continuing contract(s) with Bowater Southern Paper Company, a division of Bowater North America Corporation, of Calhoun, TN, and (4) *textile mill products* under continuing contract(s) with Crescent Hosiery Mills of Niota, TN, between points in the U.S.

MC 152509 (Sub-23), filed May 14, 1982. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., 1370 Ontario St., Cleveland, OH 44101. Representative: J. L. Nedrich (same address as applicant), (216) 566-2677. Transporting *boxes* between points in the U.S. (except AK and HI), under continuing contract(s) with Corr Pak, Inc., of New Brunswick, NJ.

MC 153679 (Sub-6), filed May 14, 1982. Applicant: CUMBERLAND FREIGHT LINES, INC., 13th St., Smyrna, TN 37167. Representative: J. Greg Hardeman, 618 United American Bank Bldg., Nashville, TN 37219, 615-244-8100. Transporting *such commodities* as are dealt in or used by retail or wholesale groceries or grocery distribution warehouses, between points in Davidson County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with C.B. Ragland Company of Nashville, TN.

MC 154569 (Sub-4), filed May 13, 1982. Applicant: LEYDIG TRUCKING, INC., P.O. Box 217, Corriganville, MD 21524. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, 301-797-8060. Transporting *coal*, between points in VA, on the one hand, and, on the other, points in PA, MD, and WV.

MC 154629 (Sub-2), filed May 12, 1982. Applicant: GLOBAL DISTRIBUTORS, INC., P.O. Box 335—Riverside Drive, Fultonville, NY 12072. Representative: Vincent Gramuglia (same address as

applicant), (518) 853-3476. 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 General Electric Company, Capacitor Products Dept., of Hudson Falls, NY, and Valcour Imprinted Papers, Inc., of Glen Falls, NY.

MC 157208 (Sub-1), filed May 11, 1982. Applicant: HACKENBERG TRUCKING COMPANY, Route 3—Long Lake, Three Rivers, MI 49093. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616) 459-6121. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in MI, IL, and IN, under continuing contract(s) with Dick Anthony Enterprises of Three Rivers, MI.

MC 160179, filed May 14, 1982. Applicant: BELL WAREHOUSE, INC., 1200 Greenwood Ave., Maywood, IL 60153. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782-8880. Transporting (1) *printed matter*, and (2) *pulp, paper and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Industrial Mill, Inc., and L. L. Hanson Company, Inc., both of Chicago, IL.

MC 161959, filed May 14, 1982. Applicant: FRED MILLER, 9236 Sandler Rd., Jacksonville, FL 32244. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632-2300. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Duval County, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162008, filed May 14, 1982. Applicant: GREAT SOUTHWEST EXPRESS CO., INC., 1023 Rockcut Rd., Forest Park, GA 30050. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477-1525. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, FL, GA, NC, SC, TN, and VA, under continuing contract(s) with Chi-Can Freight Forwarding, Ltd., and B. C. Forwarding Company, Ltd., both of Chicago, IL.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-14395 Filed 5-26-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 259]

Permanent Authority Decisions Restriction Removals Decision-Notice

Decided: May 20, 1982.

The following restrictions removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of \$10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

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 21643 (Sub-1)X, filed 5-13-82. Applicant: PAUL W. TAYLOR CO., INC., 62 Foundry St., Wakefield, MA 01880. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Lead certificate: broaden (1) from household goods to "household goods and furniture and fixtures" and (2) to country-wide authority: Somerville and

points within 25 miles thereof to "Middlesex, Essex, Suffolk, Norfolk, Plymouth, and Worcester Counties, MA".

MC 107010 (Sub-No. 70)X, filed, October 27, 1981 and previously noticed in Federal Register November 17, 1981, republished as corrected in this issue. Applicant: BULK CARRIERS, INC., P.O. Box 423, Auburn, NE 68305. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. The Commission, Appellate Division 2, by decision of May 3, 1982, ordered republication of this application to the extent that the previous publication omitted applicant's proposal to broaden its lead and Sub-No. 33 certificates. Notice is hereby given that applicant proposes to (1) in the lead, broaden to county-wide authority, (Enid) Garfield County, OK; (Hastings, Alliance, Spalding, Superior, Nebraska City, Kearney, Juniata, and Harvard) Adams, Box Butte, Greeley, Nuckolls, Otoe, Buffalo, and Clay Counties, NE; (Bellville) Republic County, KS; (Holstein, Hastings, Falls City, and Swanton) Adams, Richardson, and Saline Counties, NE; (Beatrice, Blue Springs, Clatonia, Cook, Fairbury, Hallam, Liberty, Lincoln, Odell, Wakefield, Wayne, Wymore, Pender, Rosalie, Thurston, Emerson, Oakland, Lyons, Pilger, Wisner, Norfolk, Hartington, Beemer, Carroll, Emmet, Coleridge, and West Point) Gage, Johnson, Jefferson, Lancaster, Dixon, Wayne, Thurston, Burt, Stanton, Cuming, Madison, Cedar, Holt, and Dakota Counties, NE; (Altona, Bancroft, Beemer, Belden, Carroll, Concord, Elkhorn, Emerson, Hartington, Hommer, Hubbard, Lyons, Newcastle, Norfolk, Omaha, Pender, Pilger, Randolph, Scribner, Stanton, Valley, Wakefield, Wayne, West Point, Winside, Wisner, and Yutan) Cuming, Cedar, Wayne, Dixon, Douglas, Dakota, Burt, Madison, Thurston, Dodge, Stanton, and Saunders Counties, NE; (Greenwood) Lancaster County, NE; (2) in Sub 33, broaden a less-than-countywide territory now described by highway boundaries, to Adams and Clay Counties, NE; (3) in Sub 33, delete a facilities restriction.

MC 134220 (Sub-No. 1)X, filed 5-17-82. Applicant: TED'S OF FAYVILLE, INC., P.O. Box 297, 5 Park Street, Southboro, MA 01772. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684. Lead certificate: (1) broaden commodity description from wrecked, disabled, replacement, and repossessed motor vehicles to "transportation equipment"; and (2) remove the wrecker equipment only restriction.

MC 142639 (Sub-No. 1)X, filed 5-17-82. Applicant: KELLY McKNIGHT d.b.a. KELLY McKNIGHT WRECKER SERVICE, P.O. Box 1052, Arlington, TX 76010. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684. Lead certificate (1) broaden to "transportation equipment" from wrecked, disabled, repossessed, and replacement vehicles and trailers (except mobile homes); and (2) remove wrecker equipment only restriction.

MC 142935 (Sub-No. 29)X, filed 5-17-82. Applicant: PLASTIC EXPRESS, 2301 E. Francis Street, Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. Sub 13F: remove the except commodities in bulk restriction from "such commodities as are dealt in or used by manufacturers of petroleum products."

MC 149204 (Sub-No. 3)X, filed 5-17-82. Applicant: JASPER LATNEY ROGERS, SR., d.b.a. J. L. ROGERS TRUCKING, Route 4, Box 61, Wake Forest, NC 27587. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288. Sub 2 permit, broaden to "between points in the United States (except AK and HI)", under continuing contract(s) with named shipper.

[FR Doc. 82-14394 Filed 5-26-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a)(2), Public Law 92-463, Federal Advisory Committee Act, notice is hereby given of the meeting of the steering committee to discuss formation of the PVO/Corporate Relations Subcommittee of the Advisory Committee on Voluntary Foreign Aid which will be held on June 11, 1982, immediately following the adjournment of the full Advisory Committee meeting, at The Mayflower, 1127 Connecticut Avenue, N.W., Washington, D.C. 20036.

The meeting will be open to the public. Any interested person may attend, request to appear before, or file statements with the Committee in accordance with procedures established by the Committee. Written statements should be filed prior to the meeting and should be available in twenty copies.

Dr. Toye Brown Byrd will be the AID representative at the meeting. It is suggested that those desiring further information contact Dr. Byrd at 703/235-2708, or by mail c/o the Advisory Committee on Voluntary Foreign Aid,

Agency for International Development, Washington, D.C. 20523.

Dated: May 18, 1982.

Julia Chang Bloch,
Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 82-14486 Filed 5-26-82; 8:45 am]

BILLING CODE 6116-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

1. Date: June 21-22, 1982

Time: 9:00 a.m. to 5:30 p.m.

Room: 1023

Program: This meeting will review applications submitted for the Youth Projects Program, Division of Special Programs, for projects beginning after October 1, 1982.

2. Date: June 22, 1982

Time: 9:00 a.m. to 5:30 p.m.

Room: 314

Program: This meeting will review applications in the Center for Advanced Study programs, submitted to the Division of Fellowships and Seminars, for projects beginning after June 1, 1983.

3. Date: June 24-25, 1982

Time: 9:00 a.m. to 5:30 p.m.

Room: 1023

Program: This meeting will review applications submitted for the Youth Projects Program, Division of Special Programs, for projects beginning after October 1, 1982.

4. Date: June 28-29, 1982

Time: 8:30 a.m. to 5:30 p.m.

Room: 1023

Program: This meeting will review applications submitted by state humanities committees for the Competitive Awards for Excellence, Division of State Programs, submitted for projects beginning after October 1, 1982.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or

financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c)(4); (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 82-14483 Filed 5-26-82; 8:45 am]

BILLING CODE 7536-01-M

National Council on the Arts; Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel to the National Council on the Arts will be held on June 14, 1982, from 10:00 a.m.-12:30 p.m. in the Blackstone Hotel, Michigan and Balboa, Chicago, IL; on June 14, from 1:45 p.m.-5:00 p.m. at the Chicago Public Library Cultural Center, 78 East Washington Street, Chicago, IL; June 15, from 10:00 a.m.-12:30 p.m. at the Blackstone Hotel, Michigan and Balboa, Chicago, IL; on June 15, from 12:30 p.m.-5:30 p.m. the panel will be on site visits; on June 16, from 10:00 a.m.-5:00 p.m. at the Blackstone Hotel, Michigan and Balboa, Chicago IL.

A portion of this meeting will be open to the public on June 14, from 10:00 a.m.-12:30 p.m., June 14, from 1:45 p.m.-5:00 p.m. (Public Forum), and on June 16th from 1:30 p.m.-5:00 p.m. to discuss policy, public forum, fiscal year 1984, guideline review, and on site visits.

The remaining sessions of this meeting on June 15th from 10:00 a.m.-12:30 p.m. and on June 16th from 10:00 a.m.-12:30 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.
May 21, 1982.

John H. Clark,
Director, Office of Council and Panel Operations, The National Endowment for the Arts.

[FR Doc. 82-14478 Filed 5-26-82; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted to OMB for Review

In accordance with the Paperwork Reduction Act and OMB guidelines, NSF is posting this notice of recordkeeping requirements that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-7580.

Title: Establishing Priorities for Flood Hazard Mitigation.

OMB Officer: Anita Ducca, (202) 395-7340.

Affected Public: Federal, State, and Local Officials/staffs; educators, engineers, scientists, all having a professional interest in flooding.

Number of responses: 1000; **Total number of hours:** 375 hours.

In September 1980, the National Science Foundation distributed a report, *Flood Hazard Mitigation*, to 1000 persons with interest in flooding. The NSF wishes to solicit the recipient's viewpoints anonymously to establish weighted priorities for the recommendations contained in the report. The priorities will guide future program planning and resource allocation.

Herman G. Fleming,
Clearance Officer.

[FR Doc. 82-14371 Filed 5-26-82; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-10]

Commonwealth Edison Co., (Dresden Station Unit 1); Exemption

I

The Commonwealth Edison Company (the licensee) is the holder of Facility Operating License No. DPR-2 which authorizes operation of Dresden Station Unit No. 1. This license provides, among other things, that they are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises a boiling water reactor at the licensee's site located in Grundy County, Illinois.

II

On November 19, 1980, the Commission published a revised Section 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 Section 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 fifteen subsections, lettered A through O, which specify requirements for fire protection features at nuclear power plants.

By letter dated March 6, 1981, the Commission granted Commonwealth Edison an extension of the completion date required in 10 CFR 50.48(d) to the dates required by 10 CFR 50.48(c).

By letter dated March 17, 1981 Commonwealth Edison requested, pursuant to 10 CFR 50.12, an exemption from the scheduler requirements of 10 CFR 50.48(c) and 10 CFR 50.48(d) for Dresden Station Unit 1. The requested exemption would permit Commonwealth Edison to defer completion of the fire protection features required by 10 CFR 50.48 and Appendix R to 10 CFR 50 until prior to start up from the current refueling modification and chemical cleaning outage.

Commonwealth Edison provided the following information in support of the requested exemption:

1. Dresden Unit 1 is currently shutdown for an extended refueling, modification, and chemical cleaning outage. Unit 1 is scheduled to remain shutdown until June 1986.

2. There is not fuel in the reactor vessel or the primary containment sphere.

3. All irradiated fuel is stored in the below-grade spent fuel storage pool in the fuel handling building.

4. The stored fuel has not been irradiated in the reactor for at least 28 months.

5. Fire protection features in the fuel handling building which were identified in the NRC Staff's Fire Protection Safety Evaluation Report will be installed and operational by May 1, 1981. The required implementation date for this equipment is November 17, 1981.

Mr. Thomas Rausche of Commonwealth Edison informed the staff that the fire protection features committed to in CECO's March 17, 1981 letter were installed and operational on May 1, 1981.

Based upon the above considerations, we find that the reactor is defueled and the spent fuel stored in the fuel storage building is protected by an acceptable fire protection system as described in the Staff's August 9, 1979 Fire Protection Safety Evaluation Report. Because of the above we find that there is no undue risk to the health and safety of the public involved with continued operation in the manner described. Therefore an exemption should be granted delaying the implementation of the fire protection modifications required by 10 CFR 50.48 and Appendix R to 10 CFR 50 until prior to start up from the current extended outage.

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 exemption with respect to the requirements of 10 CFR 50.48:

1. Commonwealth Edison Company is exempt from the scheduler requirements of 10 CFR 50.48 (c)(1), (c)(2), (c)(3) and (c)(4) except for the fire protection provisions which apply to the fuel handling building at Dresden Unit 1;

2. The date for submittals required in 10 CFR 50.48(c)(5) is extended until 18 months prior to the scheduled return to service for Dresden Unit 1;

3. The date for completion of the fire protection features required by 10 CFR 50.48(c) and 10 CFR 50.48(d) is extended until prior to startup from the current outage.

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.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 18th day of May, 1982.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-14490 Filed 5-26-82; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Granting Relief From ASME Code Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," to Duke Power Company, which revised the inservice inspection program for the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The ASME Code requirements are incorporated by reference into the Commission's Rules and Regulations in 10 CFR Part 50. The relief is effective as of the date of issuance.

This action provides relief from performing visual inspections on the outside surface of the core flood nozzle welds, provided ultrasonic and visual inspections are performed from the inside surface.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the related Evaluation.

The Commission has determined that the granting of this relief 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.

For further details, with respect to this action, see (1) the request for relief dated June 1, 1981, (2) the letter to Duke Power Company dated May 17, 1982, and (3) the Commission's related Evaluation of Relief Request. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of May 1982.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-14491 Filed 5-26-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co., (Maine Yankee Atomic Power Plant; Exemption

I

The Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-36 which authorizes operation of the Maine Yankee Atomic Power 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 comprises one pressurized water reactor at the licensee's site located in Lincoln County, Maine.

II

On November 19, 1980, the Commission published a revised Section 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 Section 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 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 request. 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 for 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 September 20, 1979, the licensee submitted a description of Maine Yankee's safe shutdown capability. Based on conversation with the NRC staff the licensee understood that its September 20, 1979 description was not entirely acceptable to the staff. Therefore, by letter dated February 9, 1981, the licensee requested an exemption 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 a date six months after receipt of NRC staff comments on the licensee's September 20, 1979 submittal, the submittal schedule for Maine Yankee's alternate shutdown capability design description.

By letter dated March 6, 1981 the licensee supplemented its February 9, 1981 request to include an exemption from certain requirements of Section III.L of Appendix R to the extent that section requires the alternate shutdown capability to accommodate post fire conditions where offsite power is not available. Furthermore, the licensee's letter of March 12, 1981 states that the development of Section III.G information must be delayed until the licensee receives a response to both exemption requests.

Since Section III.L provides the criteria for Alternative Safe Shutdown capability, the resolution of the March 6, 1981 exemption request would affect the final reassessment and redesign, if necessary, performed for Section III.G. Therefore, when we provided, by letter dated April 24, 1981, our comments on the licensee's September 20, 1979 submittal, we stated that the schedule requirements for the submittal of Section III.G information would be specified in conjunction with our response to the March 6, 1981 exemption request.

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 any 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 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 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 Maine Yankee 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 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. Some items remained unresolved. Further discourses between the licensee and the NRC staff resulted in resolution of many of these items as documented in a supplement to the FPSE issued January 21, 1981. In addition by letter dated March 12, 1981 the licensee resolved the remaining items, other than those items

subject to the requirements of Section III.G, by stating its intent to comply with the requirements of specified sections of Appendix R. As a result of the fire protection reviews completed thus far, numerous modifications have been made to plant physical features, systems, and administrative controls to meet the criteria of Appendix A to BTP 9.5-1. The Maine Yankee 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 of Appendix R to 10 CFR Part 50.

As noted earlier the licensee has, by letter dated March 6, 1981, requested an exemption from Section III.L of Appendix R. Since staff denial of the licensee's March 6, 1981 exemption request will be issued coincident with issuance of this exemption, the licensee's requested schedule delay corresponds to a date six months from receipt of this exemption. The Commission has previously decided that delays in the submittal of Section III.G information up to July 1, 1982 are acceptable based on the responses of a majority of licensees. In Maine Yankee's case the requested exemption from Section III.L, regarding the availability of offsite power, has a significant impact regarding the modifications necessary to meet Section III.G. Setting a response date of July 1, 1982, based on other licensee's responses, is not valid. Based on the above, we have determined that the completion of the reassessment required for Section III.G within six months of receipt of this exemption is acceptable.

Based on the above considerations, we find that the licensee has completed a substantial part of the fire protection features at the Maine Yankee plant in conformance with the requirements of the Fire Protection Rule. 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 required by Section III.G of Appendix R within six months of receipt of this exemption. We have determined that any additional delay would not be consistent with the licensee applying its best effort at resolving and completing this issue. 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 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 thereby grants the following exemption 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 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 six months from the licensee's receipt of this exemption.

Provided the following condition is met:

The design descriptions of alternative or dedicated shutdown systems to comply with Section 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 condition, 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 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.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 19th day of May, 1982.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 82-14482 Filed 5-26-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22507; 70-5943]

American Electric Power Company, Inc.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

May 20, 1982.

American Electric Power Company, Inc. ("AEP") 180 East Broad Street, Columbus, Ohio 43215, a registered holding company, has filed with this Commission a post-effective amendment to its declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By orders dated February 8, 1977, April 19, 1978, March 29, 1979, August 8, 1979, May 1, 1980, and June 30, 1981 (HCR Nos. 19879, 20506, 20979, 21180, 21544, and 22113), AEP was authorized to issue and sell, from time to time through June 30, 1982, up to 19,000,000 shares of its authorized but unissued common stock, \$6.50 par value, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan"). Through April 10, 1982, a total of 14,842,978 shares had been issued and sold, leaving a balance of 4,157,022 shares available for issuance and sale.

APE now proposes to issue and sell, from time to time through June 30, 1983, up to an additional 6,000,000 shares of its authorized unissued common stock, plus the unsold balance of the shares of common stock heretofore authorized by the Commission for issuance, pursuant to the Plan. The price of shares purchased with reinvested cash dividends is 95 percent of the average of the daily high and low sales prices of AEP's common stock on the New York Stock Exchange for the five trading days ending on the day of purchase.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 14, 1982, to the Secretary, Securities and Exchange Commission, Washington,

D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-14412 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12442; 812-5167]

Hutton Government Fund, Inc.; Filing of Application for an Order of the Commission

Notice is hereby given that Hutton Government Fund, Inc. ("Applicant"), One Battery Park Plaza, New York, New York 10004, registered under the Investment Company Act of 1940 ("Act") as an openend, diversified, management investment company, filed an application on April 15, 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 assets pursuant to 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 Maryland, and that its investment objective is to seek the maximum level of current income consistent with the maintenance of liquidity. Applicant further states that it will seek to achieve its investment objective by investing in a portfolio of short-term money market instruments having a weighted average maturity of not more than 120 days. Specifically, Applicant states that it will invest in short-term (i.e., having a remaining maturity of one year or less) securities issued or guaranteed by the United States Government or its agencies or instrumentalities; certificates of deposit

of domestic banks or thrift institutions (Applicant states that it may acquire entire packages of such obligations provided the obligation of any single bank or thrift institution in such package does not exceed the insurance coverage provided by either the federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for such instrument); repurchase and reverse repurchase agreements having a term of not more than one year relating to securities, the maturities of which may be in excess of one year.

Applicant further represents that its shares will be offered exclusively in connection with the Hutton Asset Management Account program. It is also stated that E. F. Hutton & Company, Inc., a registered investment adviser and broker-dealer, through its Hutton Asset Management Division, serves as Applicant's investment adviser, administrator and distributor. 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 therefore 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 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 requests an order of the Commission, pursuant to Section 6(c) of the Act to permit Applicant's assets to be valued according to the amortized cost method of valuation. In support of the relief requested, Applicant states that it believes its shareholders would be unfairly treated if Applicant were forced to value its portfolio instruments in a manner which would produce artificial price and yield volatility for instruments which Applicant expects to hold until maturity. It is asserted also that prospective investors in Applicant's shares are not concerned with the theoretical differences which might occur between the yield achieved through market valuation and the yield computed on the basis of amortized cost. On the other hand, Applicant states that it believes that such potential investors are vitally concerned that (1) the net asset value of their shares remain stable; and (2) the daily net income declared on their investment 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.

Applicant asserts that by maintaining a portfolio comprised principally of high quality short-term securities issued or guaranteed by the United States Government or its instrumentalities, it will be possible to provide the desired stability to its investors. It is represented that with the advice of the investment adviser based upon the adviser's experience, Applicant has determined that by maintaining an average portfolio maturity of 120 days or less, it will meet the objectives of Applicant's investors by reducing the risk of significant volatility in the value of portfolio instruments while also producing a yield commensurate with

those available in the short-term money market.

Applicant represents that, prior to instituting the amortized cost method of valuation, Applicant's board of directors will determine in good faith that the amortized cost method of valuing portfolio securities will, absent unusual or extraordinary circumstances, reflect the fair value of its assets.

Applicant agrees, in addition, that the following conditions may be imposed in any order granting the exemptions requested:

1. In supervising Applicant's operations and delegating special responsibilities involving management of Applicant's portfolio to Applicant's investment adviser, Applicant's 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 Applicant's \$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) If 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:

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 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.

redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten 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 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 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 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 Applicant's 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 14, 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 requests 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.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc 82-14413 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22502; 70-6728]

Monongahela Power Co., Potomac Edison Co., West Penn Power Co.; Proposed Sale of Short-Term Notes to Banks and to a Dealer in Commercial Paper; Request for Exception From Competitive Bidding

In the Matter of Monongahela Power Company, Fairmont, West Virginia, The Potomac Edison Company, Hagerstown, Maryland, West Penn Power Company, Greensburg, Pennsylvania.

Nonongahela Power Company ("Monongahela"), The Potomac Edison Company ("Potomac"), and West Penn Power Company ("West Penn") (referred to collectively as "applicants"), wholly-owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5).

Monongahela, Potomac and West Penn propose to issue short-term notes

from time to time to banks and to a dealer in commercial paper, during the period July 1, 1982 through December 31, 1983, provided no such notes will mature later than June 30, 1984. Applicants request an exemption from the provisions of Section 6(a) of the Act as provided by the first sentence of Section 6(b) thereof. The Commission has been requested to authorize the issuance of notes in aggregate amounts not to exceed \$60,000,000, \$57,000,000, and \$64,000,000 for Monongahela, Potomac and West Penn, respectively. These amounts include any notes which the applicants were authorized to issue under the Commission's order dated December 30, 1980 (HCAR No. 21865).

Each bank note will be dated as of the date of that borrowing, will mature not more than two hundred-seventy (270) days after the date of issuance or renewal thereof, and will bear interest at the prime or equivalent interest rate of the bank at which the borrowing is made, in effect at the time of issuance, or in effect from time to time. The applicants have established lines of credit with various banks which require compensating cash balances of 5% on all or a portion of each line of credit and, in some cases, an annual fee of 1/2%. Where balances are maintained solely to fulfill compensating balance requirements, the effective interest cost of issuing notes would be no more than 17.3684% on the basis of a prime rate of 16.5%.

The commercial paper notes will be in denominations between \$50,000 and \$5,000,000, will be of varying maturities up to 270 days after the date of issue, and will not be prepayable prior to maturity. The notes will be sold directly to A. G. Becker & Co. at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. The dealer may reoffer the commercial paper at a discount rate of 1/2% of 1% per annum less than the discount rate offered applicants. Commercial paper notes may be issued if (1) the interest cost thereof is equal to or less than the effective interest cost at which such company could borrow the same amount from banks or (2) such company cannot at that time borrow the same amount for the same period of time from the banks. The dealer will reoffer the commercial paper notes to not more than 200 of its commercial and industrial customers.

Exception from the competitive bidding requirements of Rule 50, pursuant to paragraph (a)(5) thereof, is requested for the proposed issuance and sale of commercial paper since it is not practicable to invite competitive bids for

²In 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 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.

commercial paper and current rates for commercial paper for prime borrowers such as applicants are published daily in financial publications.

The proceeds from the issuance of the proposed short-term borrowings will be used by each applicant (1) to operate its business as an electric public utility, including the financing of its construction program and acquisition of property, (2) to make advances to Allegheny Generating Company and (3) to purchase common stock in its electric utility subsidiaries and in Allegheny Generating Company. Unless otherwise authorized by this Commission, any short-term debt outstanding hereunder after December 31, 1983 will be retired not later than June 30, 1984.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 18, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application may be granted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-14414 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22505; 70-6589]

National Fuel Gas Co., Seneca Resources Corp.; Proposed Issuance and Sale of Short-Term, Secured Note to Bank by Subsidiary and Guaranty by Holding Company

In the Matter of National Fuel Gas Company, 30 Rockefeller Plaza, New York, New York 10112; Seneca Resources Corporation, 10 Lafayette Square, Buffalo, New York 14203, National Fuel Gas Company ("National"), a registered holding company and Seneca Resources Corporation ("Seneca"), a wholly-owned subsidiary, have filed with this Commission a post-effective amendment

to its application-declaration previously filed and amended pursuant to Sections 6(a), 7 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(2) thereunder.

By Commission order dated June 10, 1981 (HCAR No. 22084) Seneca was authorized to enter into a loan agreement pursuant to which Seneca has the right to borrow up to \$25,000,000 at any one time outstanding through June 14, 1982. The note is secured by a portion of Seneca's hardwood timber acreage in Pennsylvania and certain of its oil and gas properties. Payment of principal and interest is unconditionally guaranteed by National.

By post-effective amendment, it is proposed that Seneca borrow a principal amount of up to \$25,000,000 under a new secured short-term note ("Note") to be issued to Citibank and payable on or before March 1, 1983. The Note will be dated as of the date of issue and will be prepayable at any time, in whole or in part, without penalty or premium. Because the amount of unsecured debt that National and its subsidiaries may have outstanding at any one time is limited to 20% of National's consolidated capitalization, any borrowings by Seneca under the Citibank credit facility will be secured so that the borrowing capacity of National and its subsidiaries will not be impaired. The Note will be secured by first mortgages in favor of Citibank and RepublicBank, a prior lender, covering a portion of Seneca's hardwood timber acreage in Pennsylvania and certain of Seneca's oil and gas properties.

The New Note will bear interest at the base rate of interest at Citibank (16.50 at April 27, 1982) as it fluctuates from time to time, or, at Seneca's option, at such rates below Citibank's base rate for fixed periods ranging from two weeks up to ninety (90) days ("Alternate Rate"). Recently this Alternate Rate has ranged from 15.15% to 15.75% for fixed periods of two weeks while the base rate remained at 16.50%. Seneca has taken advantage of the Alternate Rate option to reduce its cost of borrowing.

When borrowings are made at the base rate, there are no other commitment fees, commissions, or compensating balances that are required under the credit facility. With respect to the Alternate Rate option, Citibank will calculate its Alternate Rate on the basis of current money market rates. Citibank will charge a management fee equal to one half of one percent (50 basis points) during all periods when borrowings are outstanding at the Alternate Rate. The management fee will raise the effective cost of borrowing to 50 basis points above the quoted Alternate Rate. If the

Alternate Rate (adjusted for the management fee) is determined to be greater than Citibank's base rate at the time Seneca must borrow, Seneca will borrow at the base rate.

Interest on the New Note will be payable as follows: (1) for borrowing at the base rate, interest is payable upon the earlier of: (a) the end of each calendar quarter; (b) prepayment, or (c) selection of the Alternate Rate Option; (2) for borrowings at the Alternate Rate, interest is payable at the end of each option period chosen; and (3) any management fee accrued is payable at the end of each calendar quarter.

The application-declaration as amended by the post-effective amendment and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 11, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as amended by the post-effective amendment or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 82-14415 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22504 70-6734]

West Texas Utilities Co.; Proposed Increase in Authorized Unsecured Debt; Order Authorizing Solicitation of Proxies

In the matter of West Texas Utilities Company, P.O. Box 841, Abilene, Texas 79604, West Texas Utilities Company ("WTU"), a public utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration with the Commission, pursuant to Sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act

of 1935 ("Act") and Rules 62 and 65 promulgated thereunder.

WTU proposes to solicit the proxies of preferred shareholders to permit an increase in its authorized unsecured debt. WTU's Restated Articles of Incorporation, as amended (the "Articles"), prohibit the issuance or assumption (except for certain limited purposes), without the affirmative vote of the holders of a majority of the preferred stock, of any unsecured debt obligations if, immediately after such issuance or assumption, the principal amount of unsecured debt obligations of WTU would exceed 20% of the sum of the company's secured debt, capital stock and surplus ("total capitalization"), or if the principal amount of all unsecured debt obligations maturing in less than ten years ("short-term debt") would exceed 10% of the company's total capitalization; provided that the 10% limit on short-term debt may be exceeded, but only if all the company's short-term debt has payment or maturity dates on or before November 1, 1982. An unsecured debt obligation which has a maturity of more than ten years at the date of issuance is not considered short-term debt until the principal is due within three years.

The company proposes to call a special meeting of its shareholders (both Preferred and Common) to be held on or about June 30, 1982 to consider and vote upon the adoption of the proposed amendment. The company proposes to mail the Notice and Proxy Statement, together with Proxy, on or about May 17, 1982, to all shareholders of record on the books of the company at the close of business on May 14, 1982.

Under Texas law and the terms of the Articles, the proposed amendment requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of Preferred Stock (voting as a class) entitled to vote at the meeting. Central and South West Corporation is the holder of all 2,588,000 outstanding shares of the WTU's Common Stock. WTU has outstanding 60,000 shares of Preferred Stock entitled to vote as a class on the proposed amendment.

WTU proposes that, upon preferred shareholder consent, the Articles be amended, to allow WTU to issue or assume unsecured debt obligations without further vote of the preferred stockholders so long as after such issuance or assumption, the principal amount of all unsecured debt obligations would not exceed 25% of the company's total capitalization and the principal amount of short-term debt would not exceed 20% of the company's total capitalization. In addition, the

amendment would provide that the company could not issue or assume unsecured debt obligations, if after giving effect to the issuance or assumption of unsecured debt obligations then to be issued, the principal amount of unsecured debt obligations would exceed 20% of WTU's total capitalization, and either (i) the total capitalization of the company would exceed \$750,000,000 or (ii) the sum of WTU's capital stock and surplus accounts would be less than 40% of the sum of the company's total capitalization and short-term debt. Finally, the amendment would provide that after the earlier of (a) the date one year after the first day of commercial operation of the company's Oklaunion generating station or (b) December 31, 1988 (the earlier of such dates being hereinafter referred to as the "Termination Date"), the company could not, except for certain limited purposes, (i) issue or assume unsecured debt obligations in an amount which would cause the company's total unsecured debt to exceed 20% of the company's total capitalization or (ii) issue or assume short-term debt in an amount which would cause the company's total short-term debt to exceed 10% of the company's total capitalization. Thus, the proposed amendment would increase through the Termination Date the amount (expressed as a percentage of total capitalization) of unsecured debt and short-term debt which could be issued or assumed by the company. After the Termination Date, WTU would again be prohibited from issuing or assuming unsecured debt if, after such issuance or assumption, the total unsecured debt of the company would exceed 20% of total capitalization or the total short-term debt of the company would exceed 10% of total capitalization. As discussed below, the purpose of the proposed amendment is to increase the alternatives available to WTU to meet its financing needs over the next several years.

WTU's estimated capital expenditures, including allowance for funds used during construction ("AFUDC"), for the years 1982-1984 are as follows:

[In thousands of dollars]				
	1982	1983	1984	Total
Generation.....	\$5,248	\$29,449	\$115,375	\$150,072
Transmission.....	26,018	24,496	15,948	66,462
Distribution.....	17,183	19,545	19,259	55,987
General.....	7,522	5,038	4,891	17,451
Total.....	55,971	78,528	155,473	289,972

The estimated capital expenditures program for the years 1982-1984 reflects

a substantial increase over the \$90,893,000 of capital expenditures for the years 1979-1981. The major component of the construction program over the next several years is a 640 megawatt coal-fired electric generating unit (the "Oklaunion unit") at the company's planned Oklaunion generating station. The unit is expected to be placed in service in 1987. It is anticipated that the company will own approximately 55% (350 megawatts) of the unit and that the balance will be owned by other electric operating companies of the Central and South West System. WTU's share of the cost of construction of the unit, including AFUDC, is estimated at \$345,000,000.

In order to provide funds to finance the significantly higher construction program through the completion of the Oklaunion unit, the company will be required to issue substantial amounts of securities during the 1982-1984 period. The company anticipates that approximately 40% (including AFUDC) and 38% (excluding AFUDC) of the funds required for its 1982-1984 construction program will be provided from internal sources. The balance of the funds required for the period will have to come from external sources. In light of the restriction on the issuance of first mortgage bonds by WTU, as described in a Commission notice dated May 7, 1982 of a WTU debenture issuance (HCAR No. 22490), the company believes that the proposed amendment will provide it with the flexibility to obtain a portion of the external funds necessary to finance the construction program through the issuance of unsecured debt.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 14, 1982 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of proxies of WTU's

stockholders should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration insofar as it relates to the proposed solicitation of proxies of WTU's stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Bollis,

Assistant Secretary.

[FR Doc. 82-14416 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22510; 70-6738]

Consolidated Natural Gas Co. et al.; Proposed Issuance and Sale of Notes to Banks and Commercial Paper to Dealer by Holding Company; Intrasystem Financing; Issuance and Sale of Subsidiary Common Stock to Holding Company; Exception From Competitive Bidding

May 21, 1982.

In the Matter of Consolidated Natural Gas Company, 100 Broadway, New York, New York 10000; CNG Coal Company, CNG, Producing Company, CNG Research Company, Consolidated Gas Supply Corporation, Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company, The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company, West Ohio Gas Company.

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiaries, CNG Coal Company ("Coal Company"), CNG Producing Company ("Producing Company"), CNG Research Company ("Research Company"), Consolidated Gas Supply Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc. ("Service"), Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"), The River Gas Company ("River") and West Ohio Gas Company ("West Ohio") have filed an application-declaration with this Commission pursuant to Sections 6(a), 6(b), 7, 9(a), 10, 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, 50(a)(2), 50(a)(5) and 70 hereunder.

Consolidated proposes to obtain funds for financing the seasonal increase in gas storage inventories of subsidiary

companies by issuing up to \$150,000,000 of notes to banks from time to time through March 31, 1983. Such notes would mature within 12 months from the date of the first borrowing. There would be no commitment fees, required compensating balances, or closing or related charges. Such notes would bear variable interest at either the prime rate in effect from time to time at the Chase Manhattan Bank, N.A. ("Chase Manhattan") and/or at Consolidated's option, at an increment of three-eighths of one percent (.375%) over the London Interbank Offered Rate ("LIBOR"), as quoted by the London office of Chase Manhattan and as adjusted for Federal Reserve requirements. Borrowing at prime may be prepaid, in whole or in part, without penalty or premium, upon five days written notice. Borrowings at LIBOR may only be repaid at the end of the LIBOR period. The average of deposits regularly maintained in participating banks by Consolidated and its subsidiaries for normal operating purposes during 1980 amounted to approximately \$25,600,000. Assuming compensating balance requirements of 10% of the lines and 10% of average borrowings, the average compensating balances would have amounted to approximately \$27,100,000 for 1980. The borrowings are made from time to time as required to finance the subsidiaries' gas storage inventories and will be repaid as gas is withdrawn from storage and sold during the 1982-1983 heating season.

Consolidated, in order to meet working capital requirements proposes to issue and sell commercial paper, in the form of short-term bearer notes, to A. G. Becker Incorporated ("Becker"), a dealer in commercial paper, from time to time through May 31, 1983. The aggregate principal amount of such notes, together with the bank notes as described below, would not exceed \$125,000,000 outstanding at any one time. Such commercial paper will have varying maturities of not more than 270 days after date of issue and will be issued and sold in varying denominations of not less than \$50,000 and not more than \$5,000,000 directly to Becker, at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and like maturity. The commercial paper will not be payable prior to maturity. Consolidated proposes to sell commercial paper only so long as the discount rate or the effective interest cost on the date of sale does not exceed the equivalent cost of borrowings from a commercial bank. No commission or fee will be payable in connection with the

issue and sale of such commercial paper notes. Becker, as principal, will reoffer such notes at a discount not to exceed one-tenth of one percent per annum less than the prevailing discount rate to Consolidated. Such notes will be reoffered to not more than 200 identified and designated customers in a nonpublic list prepared in advance by Becker and furnished to the Commission. It is anticipated that the commercial paper will be held by customers to maturity; however, if any commercial paper is repurchased by Becker pursuant to a verbal repurchase agreement, such paper will be reoffered only to others in the group of 200 customers.

If the issuance of commercial paper becomes impractical because of market conditions or other factors, Consolidated proposes to issue short-term notes to Chase Manhattan and Citibank, N.A. Consolidated would borrow up to an aggregate principal amount of up to \$50,000,000 outstanding at any one time from Chase Manhattan from time to time through May 31, 1983. Such borrowings would be at the bank's prime interest rate on the borrowing date. Consolidated would also borrow an aggregate principal amount of up to \$50,000,000 outstanding at any one time from Citibank, N.A., from time to time through May 31, 1983. Such unsecured borrowings from Citibank would be charged a commitment fee of one-eighth of one percent (0.125%) on the principal amount at Citibank's base rate of interest, the prime rate, on each borrowing date. Borrowings from both banks would be evidenced by notes of Consolidated maturing within 90 days of each borrowing date. The notes may be prepaid, in whole or in part, at any time without prior notice or premium. There will be no closing or related charges with respect to such bank loans. Assuming a 16½% prime rate and assuming that the full line is borrowed, the effective interest cost of borrowings from Chase Manhattan would be 16½% and the effective interest cost of borrowings from Citibank with a commitment fee of .125% on the principal would be 16.625%. The additional bank line of up to \$25,000,000 required to support the issuance of \$125,000,000 of commercial paper notes will be supported by existing bank lines. Should these lines be used and commercial paper outstanding exceeds \$100,000,000 an additional line of credit would be obtained and an amendment would be filed to this application-declaration.

Consolidated seeks to have the 5% limitation in condition (3) of the first

sentence of the Section 6(b) exemption from the provisions of Section 6(a) of the Act raised to 15% from the order date in this matter through May 31, 1983. Such an increase would permit Consolidated to have outstanding at any one time up to \$120,000,000 aggregate principal amount short-term, unsecured bank notes and commercial paper.

Consolidated proposes to make, from time to time up to May 31, 1983, open account advances aggregating up to \$343,000,000 to its subsidiary companies for inventory gas financing and working capital. Such advances would be made as requested by each subsidiary and will be repaid within a year of the first advance to such subsidiary company. Interest would be at substantially the same effective rate of interest as the related gas storage bank loan, sale of commercial paper, and/or bank borrowing by Consolidated. If there is no outstanding short-term debt, the interest rate would be at the prime commercial rate of interest in effect from time to time at Chase Manhattan. Such advances will be made up to the following principal amounts:

Company	Amount
CNG Producing Co.....	\$50,000,000
Consolidated Gas Supply Corp.....	125,000,000
Consolidated Natural Gas Service Company, Inc.....	1,500,000
The East Ohio Gas Co.....	100,000,000
The Peoples Natural Gas Co.....	60,000,000
The River Gas Co.....	1,500,000
West Ohio Gas Co.....	5,000,000
Total.....	343,000,000

Consolidated proposes to make long-term non-negotiable loans, aggregating \$123,700,000 to the subsidiary companies set forth below. Prior to the completion of Consolidated's long-term financing, such loans would be in the form of interim construction advances, payable on or before May 31, 1983, with interest at the prime commercial rate of interest in effect from time to time at Chase Manhattan. Following the sale of debentures by Consolidated, which are the subject of a pending application with this Commission (File No. 70-6594), the interim construction advances to subsidiary companies to the extent made by that time, will be converted into long-term notes maturing in the years coinciding with scheduled retirements of the new debentures or over a period of time to be determined by the officers of Consolidated, with interest predicated on and substantially equal to the effective cost of money to Consolidated through such sale. Loans thereafter, for this purpose, will be in the form of long-term notes. In total, the subsidiary companies propose to issue to Consolidated and Consolidated

proposes to acquire \$123,700,000 principal amount of long-term notes. Such loans would partially finance the subsidiaries' 1981 capital expenditures and would be made up to the following principal amounts:

Company	Amount
CNG Producing Co.....	\$38,000,000
Consolidated Gas Supply Corp.....	20,000,000
Consolidated Natural Gas Service Company, Inc.....	2,700,000
East Ohio Gas Co.....	45,000,000
The Peoples Natural Gas Co.....	15,000,000
The River Gas Co.....	1,000,000
West Ohio Gas Co.....	2,000,000
Total.....	123,700,000

Consolidated proposes to make revolving credit advances, aggregating \$100,000,000 to subsidiary companies set forth below for the purpose of partially financing their capital expenditures. Such advances may be made, repaid and remade through May 31, 1983 as requested by the Treasurer of each subsidiary company, upon letter agreement by each subsidiary company in accordance with Consolidated's Credit Agreement, with interest at substantially the same effective rate of interest as paid by Consolidated under the Credit Agreement. Should Consolidated have no outstanding amount under its Credit agreement, the interest rate would be the prime commercial rate of interest in effect from time to time at Chase Manhattan. When Consolidated borrows under its Credit Agreement, the effective interest rate obtained by Consolidated under its Credit Agreement would be applied to such advances outstanding. Such advances will be made up to the following principal amounts.

Company	Amount
CNG Producing Co.....	\$40,000,000
Consolidated Gas Supply Corp.....	30,000,000
The East Ohio Gas Co.....	25,000,000
The Peoples Natural Gas Co.....	5,000,000
Total.....	100,000,000

Consolidated proposes to purchase from the four subsidiaries listed below, and such subsidiaries propose to issue and sell to Consolidated, an aggregate of \$73,500,000 of capital stock at par value. The sales would be made as needed by the subsidiaries from time to time through May 31, 1983. Consolidated would make such purchases primarily from internal funds. The amounts and number of shares per subsidiary would be as follows:

Subsidiary	Number of shares (\$100 par)	Aggregate par value
CNG Coal Co.....	25,000	\$2,500,000
CNG Producing Co.....	450,000	45,000,000
CNG Research Co.....	10,000	1,000,000
Consolidated Gas Supply Corp.....	250,000	25,000,000
		73,500,000

The authorized capital stock of CNG Producing Company and CNG Research Company is not sufficient to cover the additional shares they propose to issue. In order to accommodate the proposed Transactions and to provide for future issues, Producing Company and Research Company propose to amend their certificates of incorporation to increase their authorized shares from 2,000,000 to 3,000,000 and from 140,000 to 150,000 respectively.

At the time of this filing Consolidated System LNG Company has no financing requirements. In the event that financing does become necessary, an amendment will be filed to this application-declaration.

Consolidated requests an exception from the competitive bidding requirements of Rule 50(b) pursuant to Paragraph (a)(5) with respect to the sale of commercial paper because such commercial paper will have maturities of nine months or less, current rates for commercial paper for prime borrowers, such as Consolidated, are published daily in financial publications and it is not practical to invite competitive bids for commercial paper. Consolidated also proposes that the Rule 24 certificates of notification regarding the proposed transactions be filed on a quarterly basis.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 14, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit, or in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc 82-14439 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12443; 812-5184]

Denver Partners I Limited Partnership et al.; Filing of Application

May 21, 1982.

In the Matter of Denver Partners I Limited Partnership, Denver Partners II Limited Partnership, Denver Partners III Limited Partnership, and Winthrop Financial Co., Inc., 225 Franklin Street, Boston, Massachusetts 02110.

Notice is hereby given that Denver Partners I Limited Partnership ("Partnership I"), Denver Partners II Limited Partnership ("Partnership II"), and Denver Partners III Limited Partnership ("Partnership III") (collectively, the "Partnerships"), Maryland limited partnerships, and their general partner, Winthrop Financial Co., Inc. ("Winthrop Financial" or the "Managing General Partner" and, together with the Partnerships, the "Applicants"), filed an application on May 3, 1982, and an amendment thereto on May 17, 1982, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting the Partnerships from all provisions of the Act and the rules and regulations thereunder. 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 Partnership I was formed under the Maryland Uniform Limited Partnership Act on March 2, 1982, to invest in Boulevard Plaza Associates I Limited Partnership ("Operating Partnership I") and that it will offer 125 units of limited partnership interests in Partnership I (the "Units") at a price of \$155,500 per Unit to investors meeting certain suitability standards described below, pursuant to Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Regulation D promulgated thereunder. Applicants state further that Partnership I will operate as a "two-tier" partnership, that is, Partnership I, as limited partner, will hold, as its sole investment, an 80.99% interest in Operating Partnership I, which in turn will be engaged in the acquisition, development, construction, ownership and operation of housing for low and moderate income persons, all

purportedly in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456").

Applicants maintain that Partnership I's objectives are to (a) invest in Operating Partnership I, (b) provide tax benefits on a current basis, (c) obtain reasonable protection for the investment in Operating Partnership I, (d) provide potential for appreciation and (e) provide potential for future cash distributions from operations (on a limited basis), refinancing or sale of the multi-use project described below. The objectives of Partnership II and III are to (a) invest in Operating Partnerships II and III (described below), respectively, which, in turn will invest in Operating Partnership I, (b) provide tax benefits on a current basis, (c) obtain reasonable protection for the investment in Operating Partnerships II and III, (d) provide potential for appreciation and (e) provide potential for future cash distributions for operations (on a limited basis), refinancing or sale of the multi-use project described below.

Applicants represent that Partnership I will raise \$19,437,500 from the proceeds of the offering if all the Units are sold and that, of this amount, Partnership I will contribute \$14,265,800 to Operating Partnership I as its capital contribution, and will use the remainder to pay (1) certain syndication expenses and fees to the Managing General Partner and its affiliates, the general partner of Operating Partnership I and MGIC Indemnity Corporation for its agreement to insure the second and third installments of the capital contributions of the limited partners and (2) to pay interest on a loan to be obtained from a commercial bank. Applicants further represent that, as described above, Partnership I will own an 80.99% interest as a limited partner in Operating Partnership I. Applicants assert that Operating Partnership I will, in turn, acquire, develop, construct, own and operate a multi-use project, including 844 units of rental housing for low and moderate income persons ("Project I"), part of the Boulevard Plaza Project. The Boulevard Plaza Project also includes an office tower which will be constructed by Boulevard Plaza Associates II Limited Partnership ("Operating Partnership II"), a Colorado limited partnership and Boulevard Plaza Associates III Limited Partnership ("Operating Partnership III"), also a Colorado limited partnership. Operating Partnership II will develop and operate the first four floors of the office tower ("Project II"), and Operating Partnership III will develop and operate the top five

floors of the office tower ("Project III"). Projects II and III are sometimes hereinafter referred to as the "Office Tower"; Projects I, II and III are referred to collectively as the "Project"; and Operating Partnerships I, II and III are referred to collectively as the "Operating Partnerships." In addition to developing and operating the Office Tower, upon completion of the construction of the entire boulevard Plaza Project, Operating Partnerships II and III will become limited partners of Operating Partnership I. The equity for Operating Partnerships II and III will be provided through capital contributions from Partnership II and Partnership III, respectively. Partnerships II and III will be offering limited partnerships interests in order to raise equity for investment in Projects II and III through Operating Partnerships II and III.

Applicants state that because the Project is in an urban renewal area, the Operating Partnerships have received assistance in the acquisition of land from the Denver Urban Renewal Authority, will receive construction financing from the proceeds from the sale of tax-exempt revenue bonds by the City and County of Denver, and has qualified for mortgage insurance from the Federal Housing Administration and rental subsidies from the Department of Housing and Urban Development. Applicants maintain that the Partnerships and Operating Partnerships will not acquire interests in any other entities or property except for certain limited short-term interim investments by the Partnerships.

The application states that although as a limited partner of the Operating Partnerships the Partnerships will have no control over the management of the Project, the ownership by the Partnerships of an interest in the Operating Partnerships will be the economic equivalent of direct ownership of the Project itself and that the interests in the Operating Partnerships will have no value independent of the value of the Project. Applicants assert that the Operating Partnerships will not generate substantial income or expense other than as directly related to the acquisition, development, construction, ownership and operation of the Project. Applicants further assert that the Partnerships are organized as limited partnerships because a limited partnership is the only form of organization which provides investors with both (1) the ability to claim on their individual income tax returns a share of the tax benefits as if they were direct owners of the Office Tower and Project

I, and (2) liability limited to their capital investment.

Applicants represent that the Partnerships will be controlled by Winthrop Financial as the Managing General Partner pursuant to partnership agreements and that Winthrop Financial, a Massachusetts corporation, is a wholly-owned subsidiary of First Winthrop Corporation, a Delaware corporation. Applicants further represent that Linnaeus Hawthorne Associates, an affiliate of Winthrop Financial, is currently a limited partner of the Partnerships and will convert its interest to that of a general partner upon admission of the investor limited partners. Applicants maintain that the limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnerships' businesses but that a majority in interest of the limited partners will have the right to amend the partnership agreements, dissolve the Partnerships and remove the general partners and elect a replacement therefor, provided that such rights will not adversely affect the tax or limited liability status of the limited partners. Applicants assert that under the partnership agreements, each limited partner is entitled to review all books and records of the respective partnerships at any and all reasonable times and that copies of the list of the names and addresses of the limited partners, including the number of units owned by each of them, will be available to the limited partners.

Applicants assert that the general partner of the Operating Partnerships is Brady Enterprises, a Colorado general partnership consisting of S. Bud Brady and Robert J. Joyce as general partners. Brady Enterprises and Brady Corporation, a corporation of which S. Bud Brady is president and which will serve as construction coordinator for the Project and builder of a portion of the Project, are alleged to have substantial experience in the construction and development of real estate projects, including several government-assisted projects for the elderly and handicapped. Applicants further assert that Brady Enterprises will guarantee completion of the Project, will cover certain operating deficits of the Operating Partnerships through the period in which the limited partners are making their capital contributions (the "Operating Guarantee Period") and, prior to the expiration of the Operating Guarantee Period, will repurchase the interests of the limited partners subject to certain conditions. Applicants state that in consideration of the foregoing,

Brady Enterprises will receive substantial compensation and Brady Enterprises, S. Bud Brady and Robert J. Joyce will receive interests in the Operating Partnerships disproportionate to their capital contributions.

Without conceding that the Partnerships or any one of them is an investment company as defined in the Act, Applicants request that the Partnerships be exempted from the provisions of the Act pursuant to Section 6(c). Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act and rule 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 contend that the exemption of the Partnerships from all provisions of the Act is both necessary and appropriate in the public interest. Applicants express the view that the final paragraph of Release No. 8456 contemplates that the exemptive power of the Commission under Section 6(c) may be applied to two-tier partnerships such as the Partnerships, which are "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons . . ." Applicants state that Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for such an exemption: (1) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially taxshelter, investments would not be unsuitable. . ."; and (2) "requirements for fair dealing by the General Partners of the issuer with the Limited Partners of the issuer should be included in the basic organizational documents of the company." Applicants represent that the Partnerships will comply with these conditions.

Insofar as investor suitability is concerned, Applicants state that any subscriptions for Units in Partnership I must be approved by the Managing General Partner, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber. The application indicates that the Units are being offered only to "Accredited Investors" as prescribed by Regulation D and to not more than 20 other "qualified investors" who meet certain suitability requirements. Applicants assert that an Accredited Investor under Regulation D is an investor who (a) has a net worth (i.e.,

total assets in excess of total liabilities) of at least \$770,500 per Unit, or in the event the prospective investor desires to purchase one half of a Unit, \$1,000,000 or (b) has an annual income in excess of \$200,000 in each of the last two years and reasonably expects an income in excess of \$200,000 in the current year. Applicants represent that for the purpose of this offering a qualified investor is an investor who has a net worth (exclusive of homes, home furnishings and automobiles) of at least three times the amount of the purchase price of the Units purchased. Partnership II will offer 20 units of limited partnership interests at a price of \$155,500 per unit to investors meeting the same suitability standards, and Partnership III will offer 25 units of limited partnership interests at a price of \$155,500 a unit to investors meeting these same suitability standards. Offerings of units in both the Partnerships II and III will be made pursuant to Section 4(2) of the Securities Act and Regulation D promulgated thereunder.

Insofar as fair dealing by the general partner of the issuer with the limited partners of the issuer is concerned, as reflected by the basic organizational documents of the company, Applicants contend that the partnership agreements and the Confidential Memorandum relating to the offering of the units (the "Memorandum") contain numerous provisions designed to insure fair dealing by the general partner with the limited partners. Applicants represent that all compensation to be paid to the general partner and its affiliates is fair and on terms no less favorable to the Partnerships than would be the case if such arrangements had been made with independent third parties. Applicants represent that the Partnerships believe that such compensation meets all applicable guidelines necessary to permit the units to be offered and sold in the various states which prescribe such guidelines, including the statement of policy adopted by the North American Securities Administrators Association, Inc. in respect of real estate programs.

Applicants further contend that the Partnerships' exemption from the provisions, rules and regulations promulgated pursuant to the Act is both necessary and appropriate in the public interest. Applicants maintain that, by investing in the Operating Partnerships, the Partnerships are implementing the national policy enunciated by Congress in Section 901 of Title IX of the Housing and Urban Development Act of 1968: "to encourage the widest possible participation by private enterprise in the

provision of housing for low or moderate income families. . . ."

Notice is further given that any interested person may, no later than June 14, 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 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 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. 82-14440 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22509; 70-6733]

Georgia Power Co; Proposed Sale of Transmission Lines

May 21, 1982.

Georgia Power Company ("Georgia"), 333 Piedmont Ave., N.E., Atlanta, Ga., an electric utility subsidiary of the Southern Company, a registered holding company, has filed a declaration pursuant to Section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 44 promulgated thereunder.

Georgia proposes, pursuant to a proposed Sale Agreement ("Sale Agreement") with Oglethorpe Power Corporation, an Electric Membership Generation & Transmission Corporation ("Oglethorpe"), to sell to Oglethorpe approximately 85.5 miles of 500 kv transmission line, approximately 62.8

miles of 230 kv transmission lines and approximately 91.66 miles of 46 kv transmission lines, for an aggregate sales price of approximately \$19,378,000. Such sales price represents Georgia's original (underpreciated) cost of such transmission lines (including land costs) plus an additional negotiated amount. Georgia will obtain from its First Mortgage Bond Trustee a release of such transmission lines from the lien of Georgia's First Mortgage Indenture. Georgia expects to apply the proceeds of the sale of the transmission lines toward the cost of its construction program.

The transmission lines to be sold will remain a part of the integrated transmission system operated by Georgia and Oglethorpe, and thus will remain available for the use of Georgia without charge in accordance with provisions of the Integrated Transmission System Agreement, dated as of January 6, 1975 (the "System Agreement"), between Georgia and Oglethorpe. The sale will increase Oglethorpe's investment in the integrated transmission system and will enable Oglethorpe to maintain its requisite investment in transmission facilities pursuant to the System Agreement.

The transmission lines to be sold will be operated and maintained by Georgia in accordance with the provisions of the Integrated Transmission System Operation and Maintenance Agreement, dated as of July 1, 1975 (the "Operation and Maintenance Agreement"), between Georgia and Oglethorpe. Oglethorpe will make payments to Georgia for such operation and maintenance in accordance with the provisions of the Operation and Maintenance Agreement.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 14, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-14441 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-11636]

Hughes Tool Co., Application and Opportunity for Hearing

May 21, 1982.

Notice is hereby given that Hughes Tool Company ("Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended ("1939 Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeship of Texas Commerce Bank National Association, a national banking association ("Texas Commerce"), under two indentures qualified under the 1939 Act and under one indenture not required to be so qualified are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Texas Commerce from acting as trustee under any of the subject Indenture.

Section 310(b) of the 1939 Act provides in part that if a trustee under an indenture qualified under the 1939 Act has or shall acquire any conflicting interest (as defined in such Section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, *inter alia*, that with certain exceptions a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. Texas Commerce, as trustee, entered into an indenture dated July 15, 1975 ("1975 Indenture") pursuant to

which Applicant issued \$40,000,000.00 aggregate principal amount of its 9% Sinking Fund Debentures, due July 15, 2000, and which was heretofore qualified under the 1939 Act. These indentures were registered under the Securities Act of 1933 on Form S-1 (File No. 2-54050).

2. Texas Commerce, as trustee, entered into an indenture dated November 1, 1978 ("1978 Indenture") pursuant to which Applicant issued \$60,000,000.00 aggregate principal amount of its 9% Sinking Fund Debentures, due November 1, 2008, and which was heretofore qualified under the 1939 Act. These debentures were registered under the Securities Act of 1933 on Form S-7 (File No. 2-62851).

3. The 1975 Indenture and the 1978 Indenture each provides in part as follows:

Section 7.08. Conflicting Interest of Trustee.

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 7.08, it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 7.10 * * *

(c) For the purposes of this Section 7.08, the Trustee shall be deemed to have a conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, provided that there shall be excluded from the operation of this paragraph (in the 1978 indenture, the 1975 Indenture is here identified as a specific exception) * * * any other indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding if * * * (ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures * * *

4. The Applicant entered into a Guaranty Agreement with the Texas Commerce as trustee ("Trustee") under an indenture ("Walker County Indenture") entered into between the Walker County Industrial Development Corporation ("Issuer") and the Trustee under which the Applicant unconditionally guaranteed payment of principal, interest and premium, if any,

on the approximately \$1,000,000.00 principal amount of the industrial development bonds ("Walker County Bonds") issued under the Walker County Indenture. The proceeds of the Walker County Bonds were to be loaned by the Issuer to Brown Oil Tools, Inc. ("Brown Oil"), a subsidiary of Applicant, which also unconditionally guaranteed payment of principal, interest and premium, if any, on the principal amount of the Walker County Bonds. The Walker County Bonds were not registered under the Securities Act of 1933, pursuant to an exemption contained in Section 3(a)(2) thereof. Similarly, the Walker County Indenture is not qualified under the 1939 Act pursuant to the exemption contained in Section 304(a)(4) thereof.

5. By a Ratification and Assumption Agreement and Consent, executed by Issuer, Brown Oil, the Applicant and the Trustee, dated December 8, 1981, the Applicant assumed all obligations of Brown Oil under the Walker County Indenture, and Brown Oil and Applicant agreed to a merger to be consummated on or before December 31, 1981, Applicant being the sole surviving corporation. Because of the assumption by Applicant of all obligations of Brown Oil and because Applicant is the guarantor of payment of the proceeds of the Walker County Bonds, the Walker County Indenture could be "another indenture under which any other securities of an obligor under the indenture securities are outstanding" under Section 310(b) of the 1939 Act.

6. Texas Commerce, as trustee, entered into an indenture dated December 15, 1981 ("1981 Indenture No. 1") pursuant to which Applicant issued \$100,000,000.00 aggregate principal amount of its 9-12% Convertible Subordinated Debentures, due December 15, 2006, and which was heretofore qualified under the 1939 Act.

These debentures were registered under the Securities Act of 1933 on Form S-16 (File No. 2-75256).

The 1981 Indenture No. 1 provides in part as follows:

Section 9.08. Conflicting Interest of Trustee.

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 9.08, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 9.10. * * *

(c) For the purposes of this Section 9.08 the Trustee shall be deemed to have a conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities,

or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this indenture, provided that there shall be excluded from the operation of this paragraph the three separate Indentures, dated as of July 15, 1975, as of November 1, 1978 and as of December 15, 1981 * * * and any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding if * * * (ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures * * *

7. Texas Commerce, as trustee, entered into an indenture dated December 15, 1981 ("1981 Indenture No. 2") pursuant to which Applicant issued \$100,000,000.00 aggregate principal amount of its 14½% Notes, due December 15, 1988, and which was heretofore qualified under the 1939 Act. These debentures were registered under the Securities Act of 1933 on Form S-16 (File No. 2-75254).

8. The 1981 Indenture No. 2 provides in part as follows:

Section 7.08. Conflicting Interest of Trustee.

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 7.08, it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 7.10 * * *

(c) For the purposes of this Section 7.08 the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Notes issued under this indenture, provided that there shall be excluded from the operation of this paragraph the three separate Indentures, dated as of July 15, 1975, November 1, 1978 and as of December 15, 1981 * * * and any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding if * * *

(ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the trusteeship under this Indenture and such other indenture is not so likely to involve a

material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as such under one of such indentures * * *

9. On October 10, 1980, the Commission issued an Order granting application pursuant to Section 310(b)(1)(iii) of the 1939 Act. Such Order was granted in response to an Application and a Notice of Application and Opportunity for Hearing, such Notice being filed by Applicant on September 15, 1980 and published on September 18, 1980 at 45 Fed. Reg. 62,240 (1980). In such order, the Commission made a finding that the trusteeships of the Bank under the 1975 Indenture, the 1978 Indenture and the Walker County Indenture were not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the indentures named therein.

Since the Commission found by its Order dated October 10, 1980 that there was no material conflict of interest as to the 1975 Indenture, the 1978 Indenture and the Walker County Indenture and since the 1981 Indenture No. 1 and 1981 Indenture No. 2 made reference (as permitted by the proviso to Section 310(b)(1) of the 1939 Act) to the 1975 Indenture, the 1978 Indenture, the 1981 Indenture No. 2, the only possible conflict of interest to be examined by the Commission is found in the provisions of the 1981 Indenture No. 1, the 1981 Indenture No. 2 and the Walker County Indenture.

10. Applicant's obligations under the 1981 Indenture No. 1, the 1981 Indenture No. 2 and the Walker County Indenture are not secured by assets of Applicant and are of equal rank as to one another and without priority of preference of any over the others. In the opinion of Applicant, the provisions of 1981 Indenture No. 1, the 1981 Indenture No. 2 and the Walker County Indenture are not likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any debenture issued pursuant to any indenture referred to in this Paragraph 10 to disqualify the Bank from acting as trustee under the 1981 Indenture No. 1, the 1981 Indenture No. 2 or the Walker County Indenture.

11. Applicant is not in default with respect to the 1981 Indenture No. 1, the 1981 Indenture No. 2 or the Walker County Indenture.

12. Applicant waives notice of hearing, any right to a hearing on the issues raised by the Applicant and all rights to specify procedures under the Commission's rules of practice.

For a more detailed statement of the matters of fact and law asserted here, all persons are referred to said application, which is a public document on file in the Office of the Commission, at 1100 L Street, N.W., Washington, D.C. 20005.

Notice is further given that any interested person no later than June 11, 1982, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communications or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-14442 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22508, 70-6743]

Northeast Utilities et al.; Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper, Capital Contributions and Open Account Advances by Holding Company to Subsidiaries, and Exemption From Competitive Bidding as to Commercial Paper

May 21, 1982.

In the matter of Northeast Utilities, Western Massachusetts Electric Company, The Quinnetuk Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01089; The Connecticut Light and Power Company, The Hartford Electric Light Company, Northeast Nuclear Energy Company, Rocky River Realty Company, Selden Street, Berlin, Connecticut 06037; Holyoke Water Power Company, One Canal Street, Holyoke, Massachusetts 01040.

Northeast Utilities ("NU"), a registered holding company, and its subsidiary companies, The Connecticut Light and Power Company ("CL&P"), The Hartford Electric Light Company ("HELCO"), Western Massachusetts Electric Company ("WMECO"), Holyoke Water Power Company ("HWP"), Northeast Nuclear Energy Company

("NNECO"), Rock River Realty Company ("Rocky River"), and The Quinnetuk Company ("Quinnetuk"), have filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

The declaration relates to (1) proposed short-term borrowings by certain of the declarants from time to time before June 30, 1983, through (a) in the case of NU, CL&P, HELCO, WMECO, and NNECO, the issuance of notes to banks and (b) in the case of NU, CL&P, HELCO, and WMECO, the issuance of commercial paper to a dealer in commercial paper and (2) proposed capital contributions and open account advances by NU to its subsidiary companies. The aggregate amount of all such notes at any time outstanding, whether issued to banks or to a dealer in commercial paper, will not exceed \$100,000,000 in the case of NU, \$270,000,000 in the case of CL&P, \$140,000,000 in the case of HELCO, \$85,000,000 in the case of WMECO, and \$80,000,000 in the case of NNECO. If the proposed merger of HELCO into CL&P (File No. 70-6669) becomes effective during the period, the amount of all such notes of CL&P, as the surviving company, which would be outstanding would not exceed \$410,000,000.

The bank notes will each be dated the date of issue, will have maximum maturity dates of nine months with right to renewal, will bear interest at the prime rate or at the prime rate plus a fraction thereof, or will bear interest at rates determined with reference to other financial indices, will be issued no later than June 30, 1983, and will be subject to prepayment at any time at the declarants' option with or without premium. The declarants have credit lines with a number of banks, subject in some cases to commitment fees and/or compensating balance requirements. The effective interest rates (based on a prime rate of 16½% and assuming full usage) range from 16.50% to 20.54%.

The commercial paper will be issued in the form of short-term promissory notes in denominations of not less than \$50,000 and no more than \$1,000,000, of varying maturities, with no maturity more than 270 days after the date of issue, and will not be prepayable prior to maturity. The commercial paper will be sold directly to a dealer in commercial paper at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity. No commission or fee will be payable in connection with the issuance

and sale of commercial paper. The purchasing dealer, as principal, will reoffer the commercial paper to not more than 200 institutional investors at a discount of not more than 1/4 of 1% per annum less than the prevailing discount rate.

NU expects to apply the new funds derived from the issuance and sale of the bank notes and the commercial paper during the period from July 1, 1982 to June 30, 1983, (1) to make proposed capital contributions of up to \$60,000,000 to CL&P, up to \$40,000,000 to HELCO, up to \$20,000,000 to WMECO, and up to \$3,000,000 to HWP; (2) to make proposed open account advances to Rocky River and to Quinnehtuk, both wholly-owned real estate subsidiaries of NU, in amounts not to exceed in the aggregate \$2,500,000 and \$500,000, respectively; and (3) to supply funds as needed to other subsidiary companies as heretofore or hereafter authorized by the Commission. All capital contributions to subsidiaries will be credited to their capital surplus accounts. The amounts of capital contributions stated above are in addition to capital contributions described in File Nos. 70-6586 and 70-6718.

The funds to be derived by CL&P, HELCO, and WMECO from the issuance and sale of the bank notes and commercial paper, and from the receipt of capital contributions and/or open account advances from NU, will be applied, together with other funds available to these companies, to provide working capital and to finance their respective construction expenditures (including Allowance of Funds Used During Construction but excluding nuclear fuel) in 1982 and 1983, which are estimated to be \$462,939,000, \$221,534,000, and \$134,742,000, respectively. NNECO will apply funds derived from the sale of bank notes and other funds available to it for operating and maintenance expenses for the Millstone plants and for nuclear fuel until December 1, 1982. After December 1, 1982, NNECO will apply funds to operating and maintenance expenses only. Rocky River and Quinnehtuk will use the funds from the open account advances, together with any other funds available to them, for routine real estate acquisitions and for improvements to existing facilities.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 16, 1982, to the Secretary, Securities and Exchange

Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-14443 Filed 5-26-82; 8:45 am]

BILLING CODE 811-01-M

[Release No. 18751; SR-PSE-82-5]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

May 21, 1982.

The Pacific Stock Exchange, Inc., 618 South Spring St., Los Angeles, Calif.; submitted on April 5, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to increase its listing fees for the listing of additional shares or warrants. Under the proposed amendment, the PSE would charge a fee of 1/2 cent per share subject to a \$500 minimum fee per listing, and a \$5000 maximum fee per listing. Prior to the proposed increase, the PSE has charged a fee of 1/2 cent per share, subject to a minimum fee of \$500 for listing 100,000 shares or less, and a maximum fee of \$2500 for listing 500,000 shares or more, with a minimum fee of \$500 per application, and a maximum fee of \$2500 per application.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 18658, April 15, 1982) and by publication in the Federal Register (47 FR 17152, April 21, 1982). No comments were received with respect to the proposed rule filing.

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 national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 82-14444 Filed 5-26-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2040]

Florida; Declaration of Disaster Loan Area

Marion County in the State of Florida constitutes a disaster area as a result of damage caused by flooding which occurred on April 8-10, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 14, 1982, and for economic injury until the close of business on February 17, 1983, at the address below: Small Business Administration, 400 West Bay Street, Box 35067, Jacksonville, Florida 32202, or other locally announced locations.

	Percent
Homeowners with credit available elsewhere	15%
Homeowners without credit available elsewhere	7%
Businesses with credit available elsewhere	16%
Businesses without credit available elsewhere	8
Businesses (EIDL) without credit available elsewhere	8
Other (non-profit organizations including charitable and religious organizations)	11%

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

Information on recent statutory changes (Pub. L. 97-35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 17, 1982.

James C. Sanders,
Administrator.

[FR Doc. 82-14468 Filed 5-26-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2036; Amdt. No. 1]**Missouri, Declaration of Disaster Loan Area**

The above number Declaration (see 47 FR 21672) is amended by expanding the incidence period to include those high winds and tornadoes which occurred on April 2, 1982 and April 16, 1982. The time for filing application is extended to July 8, 1982, for physical damage and February 7, 1983 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 5, 1982.

James C. Sanders,
Administrator.

[FR Doc. 82-14469 Filed 5-26-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0288]**New West Partners; Issuance of License To Operate as a Small Business Investment Company**

On April 17, 1982, a notice was published in the *Federal Register* (46 FR 22525) stating that an application had been filed by New West Partners located at 180 Newport Center Drive, Suite 200, Newport Beach, California 92660 has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1981), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

The period of comment expired on May 4, 1981, and no significant comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-0288 to New West Partners.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 20, 1982.

Robert G. Lineberry,
Acting Deputy Associate Administrator for Investment.

[FR Doc. 82-14470 Filed 5-26-82; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, June 14, 1982, at the Federal Building, 450 Golden Gate

Avenue, Room 2007, San Francisco, California 94102, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mrs. Bettye Bolden, Office of the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, Room 317, 1441 L Street, NW., Washington, D.C. 20416, (202) 653-6851, in writing or by telephone no later than June 8, 1982.

Dated: May 21, 1982.

Edna E. Powers,
Director, Office of Advisory Councils.

[FR Doc. 82-14471 Filed 5-26-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION**Coast Guard**

[CGD 82-060]

Proposed Bridge Across the Danvers River Between Salem and Beverly, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant has authorized a public hearing to be held by the Commander, First Coast Guard District, at Beverly, Massachusetts. The purpose of the hearing is to consider the application from the Commonwealth of Massachusetts to construct a fixed highway bridge across the Danvers River between Salem and Beverly, Massachusetts. All interested persons may present data, views, and comments orally or in writing at the public hearing concerning the impact of the proposed bridge on the environment and its effect on navigation. A final environmental impact statement was approved by the Federal Highway Administration on June 8, 1981.

DATE: July 8, 1982, from 1:00 p.m. to 4:30 p.m. and from 7:30 p.m. to 10:00 p.m.

ADDRESS: The Public Hearing will be held at the following location: Beverly High School, Sohier Road, Beverly, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Commander (obr), First Coast Guard District, 150 Causeway Street, Boston, Massachusetts 02114 (617) 223-0645, Attention: Mr. W. Naulty.

SUPPLEMENTARY INFORMATION: The bridge as proposed provides a vertical clearance of 48.7 feet above mean high

water and a horizontal clearance of 100 feet. All comments to be presented at the scheduled hearing will be made a part of the record and will be given full consideration in the permitting process. Of particular importance at this time are effects of the proposed bridge clearances on navigation. Presentations should include factual data to support comments presented.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed bridge, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Commander (obr), First Coast Guard District at the above address by July 1, 1982. Such notification should include the approximate time required to make the presentation. A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this bridge permit application by submitting their comments, in writing, on or before July 19, 1982 to the Commander (obr), First Coast Guard District. Each comment should state the reasons for any objections, comments or proposed changes to the plans, and the name and address of the person or organization submitting the comment.

Copies of all written communications will be available for examination by interested persons at the Office of the Commander (obr), First Coast Guard District. All comments received will be considered before final action is taken on the proposed bridge permit application. After the time set for the submission of comments, the Commander, First Coast Guard District, will forward the record, including all written comments, and his recommendations to the Commandant, U.S. Coast Guard, Washington, DC 20593. The Commandant will make the final determination of the bridge permit. Sec. 502, Act of August 2, 1946, as amended; 33 U.S.C. 525, 49 U.S.C. 1655(g)(6)(C); 49 CFR 1.46(c)(10)

Dated: May 24, 1982.

J. C. Uithol,
Captain, U.S. Coast Guard, Acting Chief,
Office of Navigation.

[FR Doc. 82-14493 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-14-M

[CGD 82-059]

Rules of the Road Advisory Council: Establishment

AGENCY: Coast Guard DOT.

ACTION: Notice of establishment.

SUMMARY: The Secretary of Transportation has approved the establishment of the Rules of the Road Advisory Council in accordance with section 5 of Pub. L. 96-591, the Inland Navigation Rules Act of 1980. The Secretary has also approved the charter for this Council. The purpose of this Council is to advise the Secretary of Transportation on matters relating to any major proposals for changes to the Inland Rules.

SUPPLEMENTARY INFORMATION: The appointed members of this Council are: Gordon W. Paulson, Haight, Gardner, Poor & Havens Law Firm; Lester C. Bedient, Crowley Maritime Corporation; Wayne Williams, Institute for Survival Technology at NOVA University; Robert Williams, North Carolina Seafood and Industrial Park; Eugene Dinnocenti, Twin County Construction Company; Lester Dutcher, SUNY Maritime College; Ed Jacobson, Ogle Bay Norton Company; Howard Krasnoff, Bluewater Yacht Builders, Ltd.; Paul M. Hammer, American Institute of Merchant Shipping; William R. Herder, Port of Newport; Warren A. Hines, Trial Attorney; Louis Kapelski, Delaware River Ferry Company; Charles F. Lehman, American Commercial Barge Line Company; G. James Lippmann, American Boat & Yacht Council; Harvey E. MacDermid, Lake Pilots Association, Inc.; Matthew B. McGowan, Santa Fe-Pomeroy, Inc.; Frank Fitzpatrick, Franklin Mint Corporation; Robert M. Lumpp, Great River Packet Company; Pat J. Neely, Jr., American Pilots Association; William L. Rich, Jr., International Organization of Masters, Mates, and Pilots, AFL-CIO; Arthur J. Thomas, San Francisco Bar Pilots Association.

FOR FURTHER INFORMATION CONTACT:

Captain J. T. Montonye, Executive Director Rules of the Road Advisory Council, Room 1418, U.S. Coast Guard Headquarters (G-NSR), 2100 2nd Street, S. W., Washington, D.C. 20593, Phone (202) 426-0980.

This notice is issued under authority of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. 1.

Dated: May 18, 1982.

H. W. Parker,

Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 82-14421 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration**Air Traffic Control Tower; Commissioning**

Notice is hereby given that on June 16, 1982, though September 7, 1982, the Airport Traffic Control Tower at the Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned as a part-time Federal Aviation Administration (FAA) facility. Tower hours of operation will be established in advance by a Notice to Airmen, and thereafter be published in the Airman's Information Manual. The designated facility identification for the FAA airport control tower will be: VINEYARD TOWER.

This information will be reflected in the FAA organization statement.

Communications to the tower should be directed to: Federal Aviation Administration, Airport Traffic Control Tower, P.O. Box 71, Vineyard Haven, Massachusetts 02568.

(Section 313(a), 72 Stat. 752; 49 U.S.C. 1354(a) and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Burlington, Massachusetts, on May 17, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82-14257 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration**Environmental Impact Statement; Delaware County, Pa.**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed fringe parking lot in Delaware County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

John R. Krause, Division Environmental Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-2276, or Robert L. Rowland, P.E., District Engineer, Pennsylvania Department of Transportation, 200 Radnor-Chester Road, St. Davids, Pennsylvania 18103.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to construct the Wallingford Fringe Parking Lot in Delaware County, Pennsylvania. The proposal would involve the construction

of a parking area and commuter rail station adjacent and with access to proposed Interstate 476, L.R. 1010. The site for the proposed parking area is a triangular piece of land of approximately six acres, bounded by the proposed I-476 right-of-way to the east, the Penn-Central Railroad to the south and Rogers Lane to the north. Four Build Alternatives and the No-Build Alternatives will be studied. Alternative 1 would provide for full access to and from northbound and southbound I-476. Alternative 2 would provide for access to and from northbound I-476 only. Alternatives 3 and 4 are identical to Alternatives 1 and 2 with the exception that each would also provide access to the parking area from the local street system.

No previous studies have been performed at this location. This EIS is being initiated as a result of a joint Federal, State and local Government Task Force established in 1980, to address certain specific issues raised during the review of the FEIS/4(f) document for I-476. The Task Force recommended the feasibility of constructing a fringe parking lot at Wallingford be studied and progressed separately from the redesign of I-476. The EIS will include detailed studies of Air Quality, Noise, Socio-Economic and Land Use, Ecology, Water Quality, Cultural Resources, Energy, Traffic and Transportation and Construction impacts.

The scoping process will be initiated with a letter sent to appropriate Federal, State and local agencies, transmitting for comment the proposed EIS Plan of Study. A Scoping Meeting will be held after receipt and review of initial comments.

A Wallingford Technical Advisory Committee (TAC) will be formed comprised of Federal, State and local agencies and community representatives to provide early and continuing input of agency policies, requirements and recommendations, and public input.

Three TAC meetings are planned at milestones in the study and will function to facilitate consultation and coordination with agencies and the public and will be in effect an extension of the formal scoping process. The initial TAC meeting is anticipated to be held in August 1982, after the formal scoping meeting with subsequent meetings in April and August of 1983.

Three public informational meetings are planned to be held in Delaware County at project milestones with the first scheduled in June 1982, following the formal scoping meeting and the remaining two meetings to follow the

first and second TAC meetings by approximately one month. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The purpose of the public informational meetings is to provide specific data relative to the study alternatives and receive comments from the community, at key points in the study following the formal scoping meeting. The Draft EIS will be available for public and agency review and comment by approximately June 1983.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA or Pennsylvania Department of Transportation at the address provided above.

Louis M. Papet,
Division Administrator, Harrisburg,
Pennsylvania.

[FR Doc. 82-14500 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs Public Meetings

The National Highway Traffic Safety Administration (NHTSA) will hold a meeting on June 30, 1982, to answer questions from the public and industry regarding the Agency's rulemaking, research and enforcement programs. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m. if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

At the June meeting, representatives of DOT will answer questions received from the industry and the public relating to NHTSA's rulemaking, research and enforcement programs (including defects). The purpose of this is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. (Questions regarding the Agency's fuel economy program will continue to be addressed at the EPA's meetings on vehicle emissions).

Questions for the June 30 meeting should be submitted in writing by June 11 to Courtney M. Price, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW.,

Washington, D.C. 20590. If sufficient time is available, questions received after the June 11 date may be answered at the meeting. The individual, group, or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by June 11 and the issues to be discussed will be mailed to interested persons on or before June 25, 1982, and will be available at the meeting. This list will serve as the agenda.

A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, D.C., within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon receipt to NHTSA, Technical Reference Section, Room 5108, 400 7th Street, S.W., Washington, D.C. 20590

Issued in Washington, D.C. on May 20, 1982.

Courtney M. Price,
Associate Administrator for Rulemaking.

[FR Doc. 82-14213 Filed 5-26-82; 8:45 am]

BILLING CODE 4910-59-M

Federal Aviation Administration

Random Drawing to Determine Priority of Air Carrier Sequence for Additional System Capacity

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public drawing.

PURPOSE OF MEETING: The Federal Aviation Administration invites all interested persons to observe the random selection of air carriers to determine the priority of sequence in which air carriers' requests for new or additional slots will be considered in accordance with Special Federal Aviation Regulation 44-3 for allocation of any additional slots at the 22 capacity limited airports and within each air traffic control center. The priority sequence will apply to the schedule period August 1, 1982 through October 30, 1982.

DATE: June 3, 1982, 10:00 a.m.

PLACE: FAA Auditorium, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey B. Safeer, Director, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 426-3331.

Drawing Procedures

Interested parties are invited to observe the drawing. The sequence of the drawing will be in the order listed in SFAR 44-3, i.e., Atlanta first, Boston second, etc. Once the 22 airports are finished, one draw will be conducted to determine priority listing of air carriers for all additional center capacity. The result of the drawing will be priority lists of air carriers for the allocation of any additional arrival slots at each airport. The actual allocation of the arrival slots will be made by the FAA Slot Allocation Committee during the week of June 14, 1982.

(Secs. 307, 313(a), and 601, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Washington, DC, on May 26, 1982.

Donald R. Segner,
Associate Administrator for Policy and International Aviation.

[FR Doc. 82-14710 Filed 5-26-82; 10:53 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of Secretary

Public Information Collection Requirements Submitted to OMB for Review

During the period May 14 through May 20, 1982, the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. N.W., Washington, D.C. 20220; and to the OMB reviewer listed at the end of each entry.Q02

Date Submitted: May 17, 1982

Submitting Bureau: Internal Revenue Service

OMB Number: N/A (New submission)

Form Number: DIR-DET 4-292

Type of Submission: New

Title: Tax Shelter Questionnaire—Master Recording

Purpose: The questionnaire has been devised to properly develop each tax shelter case. Without this questionnaire, IRS may overlook pertinent areas of examination and

will be unable to determine the taxpayer's intent for investing.

OMB Reviewer: Karen P. Sagett, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 17, 1982

Submitting Bureau: Alcohol, Tobacco & Firearms

OMB Number: 1512-0207

Form Number: ATF F 5110.43

Type of Submission: Extension (no change)

Title: Monthly Report of Processing (Denaturing) Operations

Purpose: Necessary audit tool used in performance of revenue collection and protection mission; used to monitor industry operations and compliance; provides raw data for compilation of denatured alcohol statistics.

OMB Reviewer: Suzann Evinger, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 18, 1982

Submitting Bureau: Comptroller of the Currency

OMB Number: 1557-0081

Form Number: FFIEC 101, 012 and 014

Type of Submission: Revision

Title: Reports of Condition and Income (Call Reports)

Purpose: This is the interagency or uniform call report collected by each of the three federal bank supervisory agencies. Data are used for supervisory and statistical purposes.

OMB Reviewer: Richard Sheppard, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 19, 1982

Submitting Bureau: Internal Revenue Service

OMB Number: 1545-0256

Form Number: 941C and 941C PR

Type of Submission: Revision

Title: Statement to Correct Information Previously Reported Under the Federal Insurance Contributions Act

Purpose: Used by employers to correct previously reported tax data on employees.

OMB Reviewer: Karen P. Sagett, (202) 395-6880, Office of Management and

Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 20, 1982

Submitting Bureau: Alcohol, Tobacco & Firearms

OMB Number: 1512-0040

Form Number: ATF 5630.2 and 5630.3

Type of Submission: Extension (no change)

Title: Taxpayer Delinquency Program Form Letter Statement of Liability Form Letter

Purpose: Used to determine whether an individual has become liable for special occupational taxes involving alcoholic beverages.

OMB Reviewer: Suzann Evinger, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 20, 1982

Submitting Bureau: Internal Revenue Service

OMB Number: 1545-0576

Form Number: 500-5-435

Type of Submission: Extension (no change)

Title: Southeast Region Exit Questionnaire

Purpose: Used to identify unfavorable practices and/or trends that cause competent employees to leave the IRS, and to identify necessity for corrective action.

OMB Reviewer: Karen P. Sagett, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Date Submitted: May 20, 1982

Submitting Bureau: Internal Revenue Service

OMB Number: 1545-0573

Form Number: 506-6-8

Type of Submission: Extension (no change)

Title: Reservation for IRS VITA Training

Purpose: Used to determine size of training classes needed for volunteers, depth of training, and location for classes.

OMB Reviewer: Karen P. Sagett, (202) 395-6880, Office of Management and Budget, Room 3201, New Executive

Office Building, Washington, D.C. 20503

Joy Tucker,

Departmental Reports Management Officer.

[FR Doc. 82-14417 Filed 5-26-82; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

American Manufacturer's Petition Concerning Classification of Prefinished Hardboard Siding; Extension of Time for Public Comment

AGENCY: Customs Service, Treasury.

ACTION: Notice of extension of time for comment.

SUMMARY: This notice extends the period of time within which interested members of the public may submit written comments with respect to a notice of receipt of an American manufacturer's petition relating to the classification of prefinished hardboard siding. A document inviting the public to comment on the notice was published in the *Federal Register* on March 22, 1982 (47 FR 12258). Comments were to have been received on or before May 21, 1982. A request has been received to extend the period for the submission of comments claiming that additional time is needed to prepare an adequate response. Customs believes that the request is warranted. Accordingly, the period of time for the submission of written comments is extended to June 21, 1982.

DATES: Comments must be received on or before June 21, 1982.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C., 20229.

FOR FURTHER INFORMATION CONTACT: Jenny Johnson, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

Dated: May 24, 1982.

John P. Simpson,

Director, Office of Regulations and Rulings.

[FR Doc. 82-14482 Filed 5-26-82; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register

Vol. 47, No. 103

Thursday, May 27, 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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Tennessee Valley Authority.....	7, 8

1

CIVIL AERONAUTICS BOARD

Notice of Cancellation of Presentation

TIME AND DATE: 10 a.m., May 25, 1982.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: Presentation to the Board regarding Aeroamerica's activities.

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-795-82 Filed 5-25-82; 3:00 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD

Notice of Deletion From the May 20, 1982 Board Meeting

TIME AND DATE: 10 a.m., May 20, 1982.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428

SUBJECT: 8. Docket 40176, Airport "slot" exchange agreement filed by the Air Transport Association of America. (BDA)

STATUS: OPEN.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-796-82 Filed 5-25-82; 3:00 pm]

BILLING CODE 6320-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., June 3, 1982.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreement No. 7593-7: Modification of the Hoegh Lines Joint Service to add two parties.

2. Agreement No. T-4004: Terminal service agreement between the Port of Portland, Oregon and the Japanese Six Lines.

3. Docket No. 81-50: Per-Container Rates—Tariff Filing Requirements Applicable to Carriers and Conferences in the Foreign Commerce of the United States—Consideration of comments and proposed final rule.

4. Docket No. 80-13: Licensing of Independent Ocean Freight Forwarders—Further Notice of Proposed Rulemaking—Consideration of comments, request for oral argument and proposed final rule.

Portion closed to the public:

1. Docket No. 72-35: Pacific Westbound Conference—Investigation of Rates, Rules and Practices Pertaining to the Movement of Wastepaper and Woodpulp from United States West Coast Ports to Ports in Japan—Consideration of responses to Notice regarding further proceedings.

CONTACT PERSON FOR MORE

INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-794-82 Filed 5-25-82; 2:33 pm]

BILLING CODE 6730-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, June 2, 1982.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. 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 25, 1982.

James McAfee,

Associate Secretary of the Board.

[S-800-82 Filed 5-25-82; 4:12 pm]

BILLING CODE 6210-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 17 and 24, 1982 (changes).

PLACE: Commissioner's Conference Room 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE DISCUSSED: Thursday, May 20 (Additional item):

3:15 p.m.:

Discussion of Enforcement Action (Closed—Exemption 5, 10)

Tuesday, May 25:

10:00 a.m.:

Briefing on Human Factors Society Report (Public Meeting) (As scheduled)

Wednesday, May 26:

10:00 a.m.:

Briefing on Investigatory Matters (Closed—Exemption 5) (Time Changed)

1:30 p.m.:

Briefing by DOR on TMI-2 Cleanup (Public Meeting) (Time Changed)

Thursday, May 27:

10:00 a.m.:

Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemption 2 and 6)

1:30 p.m.:

Analysis of Licensing Board Decision for San Onofre Units 2 and 3 (Seismic) (Closed—Exemption 10)

3:00 p.m.:

Affirmation/Discussion Session (Public Meeting)

Affirmation and/or Discussion and Vote:

a. Final Amendment to 10 CFR Part 50 and to Appendix E: Modification to Emergency Preparedness Regulations Relating to Low Power Operation

Friday, May 28:

10:00 a.m.:

Discussion of Enforcement Action (Closed—Exemption 5)(Postponed from May 21)

AUTOMATIC TELEPHONE ANSWERING

SERVICE FOR SCHEDULE UPDATE: (202)

634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

[S-799-82 Filed 5-25-82; 3:24 pm]

BILLING CODE 7590-01-M

6

SECURITIES AND EXCHANGE COMMISSION

- Notice is hereby given, pursuant to the provisions of the Government in the

Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the Week of May 31, 1982, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Wednesday, June 2, 1982, at 10:00 a.m. An open meeting will be held on Thursday, June 3, 1982, at 10:00 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioners Loomis and Thomas voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, June 2, 1982, at 10:00 a.m., will be:

Litigation matter.

Access to investigative files by Federal, State, or Self-Regulatory authorities.

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive action.

The subject matter of the open meeting scheduled for Thursday, June 3, 1982, at 10:00 a.m., will be:

1. Consideration of whether to adopt Rule 10b-18 under the Securities Exchange Act of 1934 and to withdraw proposed Rule 13e-2 under that act. If adopted, Rule 10b-18 would create a "safe harbor" from liability under certain anti-manipulative provisions of the federal securities laws in connection with purchases by an issuer of its common stock. For further information, please contact, Mary Chamberlin at (202) 272-2880.

2. Consideration of whether to authorize publication of a release announcing: (1) revision of Guide 5 (formerly designated Guide 60) for "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," of the Division of Corporation Finance's Industry Guides, concerning track record disclosure of sponsors of real estate limited partnerships; (2) amendment of the financial statement requirements of Rule 3-14 of Regulation S-X concerning "Special Instructions for Real Estate Operations to be Acquired;" and (3) conforming changes to Guide 5 and to Form 8-K for current reports under the Securities

Exchange Act of 1934. For further information, please contact William L. Larsen at (202) 272-2604.

3. Consideration of whether to issue a release adopting revisions to Form S-18, a simplified registration form under the Securities Act of 1933, expanding its availability to non-corporate registrants and registrants engaged in oil and gas related operations, and amending several items. For further information, please contact Suzanne Brannan at (202) 272-2644.

4. Consideration of whether to publish for comment amendments to 17 CFR 201.22(e), 230.403(a), 240.12(b)-12(a) and (b), 250.22(d), 260.7a-17, 260.7a-18(a), 270.0-2(b), 270.8(b)-12(a) and (b), and 275.0-4(b), to require the use of 8 1/2 x 11 inch paper for all statements, applications, reports, documents and amendments thereto filed with the Commission. For further information, please contact Douglas J. Scheidt at (202) 272-2454.

5. Consideration of whether to authorize the General Counsel to send a letter to the Subcommittee on Criminal Justice of the House Committee on the Judiciary, expressing the Commission's concerns about a provision of H.R. 5703 that would bar federal prosecutions in many cases after a person had been prosecuted by a state or local government for the same conduct that would be the basis for the federal prosecution. For further information, please contact Alex White at (202) 272-2444.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Siegelbaum at (202) 272-2668.

May 24, 1982.

[S-793-82 Filed 5-25-82; 10:32 am]

BILLING CODE 8010-01-M

7

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 6:30 p.m. (CDT), Tuesday, May 25, 1982.

PLACE: Austin Peay State University, University Center Ballroom, College Street, Clarksville, Tennessee.

STATUS: Open.

A—Project Authorizations

1. Project Authorization No. 3606—Installation of automated testing system in the central computer center's network control center located in Chattanooga, Tennessee.
2. Project Authorization No. 3609—Installation of additional chemical treatment ponds at Paradise and Shawnee steam plants.

B—Purchase Awards

1. Invitation C3-200911—Indefinite quantity term contract with Memphis Light, Gas and Water Division, Memphis,

Tennessee, to provide natural gas for Allen Fossil Plant.

C—Power Items

1. Renewal power contract with Warren Rural Electric Cooperative Corporation.
2. Bill of sale and quitclaim deed conveying to Water Valley, Mississippi, a section of TVA's Oxford-Water Valley 46-kV line located in Yalobusha County, Mississippi.
3. Agreement with Electric Power Research Institute covering arrangements for demonstration of the 300-MVA superconducting generator to be installed at TVA's Gallatin Steam Plant.

F—Unclassified

1. Termination of the A. W. Overdeer right of way lease covering property located at TVA's Fabius, Alabama, coal project.
2. Revised TVA code relating to transfer, sale and lease of personal property (Code IV Disposal).
3. Appointment of Richard M. Gutekunst as an additional assistant secretary of TVA.

CONTACT PERSON FOR MORE

INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 25, 1982.

[S-797-82 Filed 5-25-82; 3:06 pm]

BILLING CODE 8120-01-M

8

TENNESSEE VALLEY AUTHORITY

TIME AND DATE: 2 p.m. (e.d.t.), Tuesday, June 1, 1982.

PLACE: Conference Room B-32, West Tower, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Old Business Item

1. Grant of permanent industrial easement to Inland Ports, Inc., and abandonment of certain flowage easement rights affecting Watts Bar Reservoir lands near Harriman Industrial Park in Harriman, Tennessee—Tract Nos. XWBR-695IE, XWBR-693IE, and WBR-1259F.

CONTACT PERSON FOR MORE

INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 25, 1982.

[S-798-82 Filed 5-25-82; 3:06 pm]

BILLING CODE 8120-01-M

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. The text is organized into several columns and paragraphs, but no specific words or phrases can be discerned.]

Environmental Protection Agency

Thursday
May 27, 1982

Part II

Environmental Protection Agency

**Iron and Steel Manufacturing Point
Source Category Effluent Limitations
Guidelines, Pretreatment Standards, and
New Source Performance Standards**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[WH-FRL 2033-5]

Iron and Steel Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today issuing a final regulation to limit effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities engaged in manufacturing steel. The Clean Water Act and a consent decree require EPA to issue this regulation.

The purpose of this regulation is to specify effluent limitations for "best practicable technology," "best available technology," "best conventional technology," and "new source performance standards" for direct dischargers and to establish pretreatment standards for indirect dischargers.

DATE: This regulation shall become effective May 27, 1982.

ADDRESSES: Technical information and copies of technical document may be obtained from Mr. Ernst P. Hall, at: Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The economic analysis may be obtained from Mr. Robert Greene, Office of Policy Analysis (PM 220), at the same address.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, (202) 426-2586.

SUPPLEMENTARY INFORMATION:

Organization of this Notice

I. Legal Authority

II. Background

- A. The Clean Water Act
- B. Prior EPA Regulations
- C. Overview of the Industry

III. Scope of this Rulemaking and Summary of Methodology

IV. Data Gathering Efforts

V. Additional Data Gathering

VI. Sampling and Analytical Program

VII. Industry Subcategorization

VIII. Available Wastewater Control and Treatment Technology

- A. Status of In-Place Technology
- B. Control Technologies Considered

IX. Best Practicable Technology (BPT) Effluent Limitations

X. Best Available Technology (BAT) Effluent Limitations

XI. New Source Performance Standards (NSPS)

XII. Pretreatment Standards for Existing Sources (PSES)

XIII. Pretreatment Standards for New Sources (PSNS)

XIV. Best Conventional Technology (BCT) Effluent Limitations

XV. Summary of Public Participation

XVI. Response to Public Comments

XVII. Summary of Changes from Proposed Regulations

XVIII. Regulated Pollutants

XIX. Pollutants and Subcategories Not Regulated

XX. Monitoring Recommendations

XXI. Cost and Economic Impacts

XXII. Non-Water Quality Aspects of Pollution Control

XXIII. Best Management Practices (BMPs)

XXIV. Upset and Bypass Provisions

XXV. Variances and Modifications

XXVI. Relationships to NPDES Permits

XXVII. Executive Order 12291—Regulatory Impact Analysis

XXVIII. Regulatory Flexibility Analysis

XXIX. List of Subjects in 40 CFR Part 420

XXX. Appendices:

A. Abbreviations, Acronyms, and Terms Used in This Notice

B. Development of Regulated Pollutant List

C. Pollutants Considered for Specific Limitation by Subcategory

D. Control and Treatment Technologies

I. Legal Authority

The regulation described in this notice is promulgated under authority of sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC §§ 1251 *et seq.*, as amended by the Clean Water Act of 1977, P.L. 92-517) (the "Act"). This regulation is also promulgated in compliance with the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

II. Background

The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT"), section 301(b)(1)(A); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable * * * which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), section 301(b)(2)(A). New industrial direct dischargers were required to

comply with section 306 new source performance standards ("NSPS"), based upon best available demonstrated technology; and new and existing dischargers to publicly owned treatment works ("POTWs") were subject to pretreatment standards under sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTWs (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based upon regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Moreover, sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these regulations by the dates specified in the Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule to promulgate, for 21 major industries, BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the Federal water pollution control program, its most

significant feature is the incorporation into the Act of several basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984 of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under section 301(b) of the Act. Likewise, the EPA programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Congress added section 304(e) to the Act, authorizing the Administrator to prescribe "best management practices" ("BMPs") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for nontoxic pollutants. Instead of BAT for "conventional" pollutants identified under section 304(a)(4) (including total suspended solids, biological oxygen demand, oil and grease and, fecal coliform, and pH), the new section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT"). The factors considered in assessing BCT for an industry include the costs of attaining a reduction in effluents and the effluent reduction benefits derived compared to the costs and effluent reduction benefits from the discharge of publicly owned treatment works (section 304(b)(4)(B)). For nontoxic, nonconventional pollutants, sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of this regulation is to provide effluent limitations for BPT, BAT and BCT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under sections 301, 304, 306, 307, and 501 of the Clean Water Act. Based upon recent court rulings which remanded the BCT methodology to the Agency for further consideration, BCT limitations for those subcategories of the steel

industry where BAT limitations more stringent than the respective BPT limitations are promulgated are reserved at this time and not included in this regulation. When a revised BCT methodology is adopted, the Agency will consider whether BCT limitations more stringent than the respective BPT limitations are appropriate for the reserved subcategories.

Prior EPA Regulations

On June 28, 1974, EPA promulgated effluent limitations guidelines for BPT and BAT, NSPS, and PSNS for the basic steelmaking operations (Phase I) within the integrated steel industry. 39 FR 24114-24133, 40 CFR Part 420, Subparts A-L. That regulation covered 12 subcategories of the industry: By-Product Cokemaking, Beehive Cokemaking, Sintering, Blast Furnace (Iron), Blast Furnace (Ferromanganese), Basic Oxygen Furnace (Semi-Wet Air Pollution Control Methods), Basic Oxygen Furnace (Wet Air Pollution Control Methods), Open Hearth Furnace, Electric Arc Furnace (Semi-Wet Air Pollution Control Methods), Vacuum Degassing, and Continuous Casting.

In response to several petitions for review, the United States Court of Appeals for the Third Circuit remanded that regulation to the Agency on November 7, 1975. *American Iron and Steel Institute, et al. v. EPA*, 526 F.2d 1027 (3rd Cir. 1975) ("AISI I"). While the Court rejected all technical challenges to the BPT limitations, it held that the BAT effluent limitations and NSPS for certain subcategories were "not demonstrated." In addition, the court questioned all of the regulation on the grounds that EPA had failed to consider adequately the impact of plant age on the cost or feasibility of retrofitting pollution control equipment, to assess the impact of the regulations on water scarcity in arid and semi-arid regions of the country, and to make adequate "net/gross" provisions for pollutants found in intake water supplies.¹

On March 29, 1976, EPA promulgated BPT effluent limitations guidelines and proposed BAT limitations, NSPS and PSNS for steel forming and finishing operations (Phase II) within the iron and steel industry. 39 FR 12990-13030, 40 CFR Part 420, Subparts M-Z. That regulation covered 14 subcategories of the industry: Hot Forming—Primary; Hot Forming—Section; Hot Forming—Flat;

Hot Forming—Pipe & Tube; Pickling—Sulfuric Acid—Batch and Continuous; Pickling—Hydrochloric Acid—Batch and Continuous; Cold Rolling; Hot Coatings—Galvanizing; Hot Coatings—Terne; Miscellaneous Runoffs—Storage Piles, Casting, and Slagging; Combination Acid Pickling—Batch and Continuous; Scale Removal—Kylene and Hydride; Wire Pickling and Coating; and Continuous Alkaline Cleaning.

In response to several petitions for review, the U.S. Court of Appeals for the Third Circuit remanded the regulation to the Agency on September 14, 1977. *American Iron and Steel Institute, et al. v. EPA*, 568 F.2d 284 (3rd Cir. 1977). While the court again rejected all technical challenges to the BPT limitations, it again questioned the regulation in regard to the age/retrofit and water scarcity issues. In addition, the court invalidated the regulation as applied to the specialty steel industry for lack of proper notice. Finally, the Court directed EPA to reevaluate its estimates of the cost of compliance with the regulation in light of certain "site-specific" factors and to reexamine its economic impact analysis.²

On June 26, 1978 the Agency promulgated General Pretreatment Regulations applicable to existing and new indirect dischargers within the steel industry and other major industries, 43 FR 27936-2773 (40 CFR Part 403). For the most part, those regulations are currently in effect.

On January 7, 1981 the Agency proposed BPT, BAT, and BCT limitations and NSPS, PSES, and PSNS for the steel industry, 46 F.R. 1858. This final regulation follows that proposal.

Overview of the Industry

The steel industry is included within the United States Department of Commerce, Bureau of the Census Standard Industrial Classification (SIC) Major Group 33—Primary Metal Industries. Those parts of the industry covered by this regulation are the subgroup SIC Nos. 3312, (except coil coatings) 3315, 3316, and 3317. These include all processes, subprocesses, and alternate processes involved in the manufacture of intermediate or finished products in the above categories.

The manufacture of steel involves many processes which require large quantities of raw materials and other resources. Steel facilities range from comparatively small plants engaging in one or more production processes to

¹ The court also held that the "form" of the regulations was improper, because they did not provide "ranges" of limitations to be selected by permit issuers. This holding, however, was recalled in *American Iron and Steel Institute, et al. v. EPA*, 560 F.2d 569 (3rd Cir. 1977).

² The court also held that EPA had no statutory authority to exempt plants in the Mahoning Valley region of Eastern Ohio from compliance with the BPT regulations.

extremely large integrated complexes engaging in several or all production processes. Even the smallest steel facility, however, represents a fairly large industrial complex. Because of the wide variety of products and processes in this industry, operations vary from plant to plant.

The 1980 revenues of the United States steel industry were about 54 billion dollars. The industry ranks behind the automotive and petroleum industries in the values of its total shipments; and, with about 570,000 employees, is second only to the automotive industry in the number of employees.

Fifteen steel corporations provided approximately 87% of the total annual U.S. steel ingot production. U.S. steel production represents about 15% of world production.

The steel industry can be segregated into two major components: basic steelmaking; and forming and finishing operations. The Agency estimates that there are about 680 plant locations containing over two thousand individual steelmaking and forming and finishing operations. A listing of these plants is contained in the Appendix B to Volume I of the technical Development Document.

In the first major process, coal is converted to coke which is then combined with iron ore and limestone in a blast furnace to produce iron. The iron is then purified into steel in either open hearth, basic oxygen or electric arc furnaces. Finally, the steel can be further refined by vacuum degassing.

Following the steelmaking processes are the hot forming (including continuous casting) and cold finishing operations. Hot forming primary mills reduce steel ingots to slabs or blooms and secondary hot forming mills reduce slabs or blooms to billets, plates, shapes, strip, and various other products. Steel finishing operations involve a number of other processes that do little to alter the dimensions of the hot rolled product, but which impart desirable surface or mechanical properties.

Water is essential to the industry and is used in appreciable quantities in virtually all process operations. An average of 40,000 gallons of water is used in the production of every ton of finished steel, making the industry one of the highest water users of any manufacturing industry.

The following wastewater pollutants have historically been regulated in the steel industry: Suspended solids, oil and grease, ammonia-N, cyanide, phenols, fluoride, iron, total and hexavalent chromium, tin, lead, and zinc. The

discharge of these pollutants is limited by this regulation. Other pollutants, such as chloride, are found in the industry's wastewaters. However, the Agency is not limiting those pollutants in this regulation because the technology for their removal is presently considered to be beyond the scope of best practicable or best available technology for this industry.

In addition to the pollutants known to be present in steel industry wastewaters, many other pollutants became subject to consideration as a result of the NRDC/EPA Settlement Agreement noted earlier. The original list of 65 pollutant classes was defined more specifically by selecting definite compounds within each class to facilitate analytical qualification and quantification and to serve as indicators for other members of the classes. The list of 129 specific toxic pollutants was therefore developed.

III. Scope of This Rulemaking and Summary of Methodology

This regulation expands the water pollution control requirements for the steel industry. In EPA's prior regulations, emphasis was placed on the achievement of best practicable technology (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well-known technologies for control of familiar (i.e., "classical") pollutants.

In contrast, EPA's efforts are now directed toward insuring the achievement by July 1, 1984, of the best available technology economically achievable, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, this technology level represents the best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of toxic substances.

EPA's implementation of the Act required a complex investigation, described in this section and succeeding sections of this notice. EPA and its laboratories and consultants had to develop analytical methods for toxic pollutant detection and measurement, which are discussed under Sampling and Analytical Program. EPA then gathered technical and financial data about the industry, which are summarized under Data Gathering Efforts.

EPA studied the steel industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments of the industry. This study included the identification of raw waste and treated effluent characteristics including: (1) The sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant, and (2) the constituents of wastewaters, including toxic pollutants (see Industry Subcategorization for further discussion). EPA identified the pollutants which were considered for effluent limitations and standards of performance, and statistically analyzed raw waste constituents, as discussed in detail in each subcategory report of the Development Document.

EPA identified several distinct control and treatment technologies, including both in-plant and end-of-process technologies, which are in use or are capable of being used in the steel industry. The Agency compiled and analyzed historical data and newly generated effluent quality data resulting from the application of these technologies. The long-term performance, operational limitations, and reliability of each of the treatment and control technologies were also identified. In addition, EPA considered the nonwater quality environmental impacts of these technologies, including impacts on air quality, solid waste generation, water scarcity, and energy requirements.

The Agency estimated the cost of each control and treatment technology by using standard engineering analysis as applied to the applicable wastewater characteristics. EPA derived unit process costs from model plant characteristics (production and flow) applied to each treatment process (i.e., primary coagulation-sedimentation, activated sludge, multi-media filtration). These unit process costs were added to yield the total costs for each treatment level. After confirming the reasonableness of this methodology by comparing EPA cost estimates to actual treatment system costs reported by the industry, the Agency evaluated the economic impacts of these costs. (Costs are reviewed in each subcategory report of the Development Document. Economic impacts are reviewed in the section of this notice entitled Costs, Effluent Reduction Benefits, and Economic Impacts).

Upon consideration of these factors, as more fully described below, EPA identified various control and treatment technologies including the BPT, BAT, BCT, PSES, PSNS, and NSPS model treatment systems. This regulation, however, does not require the installation of any particular technology. Rather, it requires the achievement of effluent limitations representative of the proper operation of these technologies or equivalent technologies.

The effluent limitations and standards for BPT, BAT, BCT, PSES, PSNS, and NSPS are expressed as mass limitations (lbs/1000 lbs) of product and were calculated by multiplying four figures: (1) Effluent concentrations determined from analysis of control technology performance data, (2) wastewater discharge flow for each subcategory, (3) any relevant process or treatment variability factor (e.g., maximum month vs. maximum day), and (4) the appropriate conversion factor. This basic calculation was performed for each regulated pollutant in each subcategory of the industry. In those few cases where the Agency could not relate wastewater flow to production (e.g., fume scrubbers in acid pickling and hot coating operations), specific daily mass limitations are provided.

In evaluating the previously promulgated BPT limitations in light of the Third Circuit's decisions, EPA found that in most instances those limitations are well demonstrated and, in some instances, are less stringent than can be currently justified.

IV. Data Gathering Efforts

Before initiating this study, EPA reviewed the original Development Documents and appendices.³ The Agency concluded that additional data were required to respond to the Third Circuit's rulings in *AISI I* and *AISI II* and to develop regulations in accordance with both the Clean Water Act and the *NDRC v. Train Settlement Agreement*.

The Agency sent Data Collection Portfolios (DCPs) to all basic steelmaking operations and to at least 85% of the steel forming and finishing operations in the United States. The DCPs requested information concerning production processes, production capacity and rates, process water usage,

wastewater generation rates, wastewater treatment and disposal methods, treatment costs, location, age of production and treatment facilities, as well as general analytical information. The Agency received responses for 391 steelmaking operations and for 1632 forming and finishing operations.

The Agency also sent Detailed Data Collection Portfolios (D-DCPs), under the authority of Section 308 of the Act, to 50 steelmaking facilities and 128 forming and finishing facilities. The D-DCPs requested detailed information concerning the cost of installing pollution control equipment including capital, annual and retrofit costs. The D-DCPs also requested long-term analytical data and data regarding specific production operations.

The Agency determined the presence and magnitude of the 129 specific toxic pollutants in steel industry wastewaters in a two-part sampling and analysis program involving 31 steelmaking facilities and 83 forming and finishing facilities.

The Agency obtained data not only from previous studies, questionnaire responses, and sampling visits, but also from NPDES permit files, contacts with pollutant control equipment suppliers, treatability studies, and literature searches. The data gathering program solicited all known sources of data. All available information was used in developing the proposed regulation.

V. Additional Data Gathering

After the issuance of the proposed regulation, the Agency engaged in a number of additional data gathering activities. These activities included: (1) The collection of a substantial amount of toxic metals data from fifteen plants in the hot forming subcategory; (2) a screening of over twenty cold rolling operations for toxic organic pollutants, and a detailed survey at one cold rolling operation; and, (3) requests for more detailed information to certain commenters. These requests sought information regarding (a) cost, flow, and effluent quality data to permit the Agency to fully evaluate comments received on the proposed regulation, and (b) the financial condition of merchant coke and pig iron producers. These data were placed in the public docket for this rulemaking. In general, the additional data gathered are corroborative of the data the Agency originally had.

A full discussion of the results of these additional data gathering efforts and their relevance to the final rulemaking can be found below in this preamble and in the respective subcategory reports of the Development Document.

VI. Sampling and Analytical Program

The sampling and analysis program for this rulemaking concentrated on the toxic pollutants designated in the Clean Water Act, as well as on the conventional and nonconventional pollutants found in steel industry wastewaters. Although it was expected that, except for cokemaking wastewaters, toxic pollutants in the steel industry wastewaters would be inorganic rather than organic, the wastewaters from each subcategory were sampled and analyzed for the presence of toxic organic pollutants. The Agency has not promulgated analytical methods for many of the organic toxic pollutants under Section 304(h) of the Act, although a number of these methods have been proposed (44 FR 69464, December 3, 1979; 44 FR 75028, December 18, 1979). Additional information on the development of sampling and analytical methods for toxic organic pollutants is contained in the preamble to the proposed regulation for the Leather Tanning Point Source Category, 40 CFR Part 425, 44 FR 38749, dated July 2, 1979.

Before analyzing steel industry wastewaters, EPA concluded that it had to designate specific toxic pollutants for analysis. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; analyses for all of them would overwhelm private and government laboratory resources. In order to make the task more manageable, EPA selected pollutants for study in this and other industry rulemakings. The criteria for choosing these pollutants included the frequency of their occurrence in water, their chemical stability and structure, the amount of the chemical produced, and the availability of chemical standards for measurement.

EPA checked for the presence and magnitude of the 129 pollutants in steel industry wastewaters in a two-phase sampling and analysis program. The Agency selected plants for sampling which it believed were representative of the manufacturing processes, the prevalent mix of production among plants, and the current treatment technology in the industry. During the first phase of the program, EPA sampled ten steelmaking facilities and eleven forming and finishing facilities. During the second phase of the program, EPA sampled 22 steelmaking facilities and 118 forming and finishing facilities.

The primary objective of the field sampling program was to obtain composite samples of wastewater from

³ See EPA 440/1-74-024a; Development Document for Effluent Limitation Guidelines and New Source Performance Standards for the Steelmaking Segment of the Iron and Steel Manufacturing Point Source Category, June, 1974; and EPA 440/1-76/048-d; Development Document for Interim Final Effluent Limitation Guidelines and Proposed New Source Performance Standards for the Forming, Finishing, and Specialty Steel Segments of the Iron and Steel Manufacturing Point Source Category, March, 1976.

which to determine the concentrations of toxic pollutants. Sampling visits were made during two to three consecutive days of plant operation, with raw wastewater samples taken either before treatment or after minimal preliminary treatment. Treated effluent samples were taken following application of in-plant treatment technologies. EPA also sampled intake water to determine the presence of toxic pollutants prior to contamination by steelmaking processes.

During the first phase of the sampling program the Agency detected and quantified wastewater constituents included on the list of 129 toxic pollutants. Wherever possible, each sample of an individual raw waste stream, a combined waste stream, or a treated effluent was collected by an automatic, time series sample compositor over 2 to 3 consecutive 24 hour sampling periods. Where automatic compositing was not possible, grab samples were taken and composited manually. The purpose of the second phase of the sampling program was to confirm the presence and further quantify the concentrations and waste loadings of the toxic pollutants found during the first phase of the program.

EPA used the analytical techniques described in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April, 1977. Very similar methods are found among those proposed on December 3, 1979. EPA did not find significant quantities of toxic organic pollutants in most steelmaking wastewaters. The exceptions are cokemaking and cold rolling wastewaters.

Metals analyses for the basic steelmaking operations were by inductively coupled plasma optical emission spectrometry except that the standard flameless atomic absorption method was used for mercury analyses. Metals analyses for the forming and finishing operations were by a combination of flame and flameless atomic absorption methods.

Analyses for cyanide and cyanide amenable to chlorination were also performed using 304(h) methods.

Analysis for asbestos fibers included transmission electron microscopy with selected area diffraction; results were reported as chrysotile fiber count.

Analyses for conventional pollutants (BOD₅, TSS, pH, and oil and grease) and nonconventional pollutants (total residual chlorine, iron, ammonia, fluoride, and COD) were performed using 304(h) methods.

VII. Industry Subcategorization

In developing this regulation, the Agency determined that different effluent limitations and standards are appropriate for distinct segments or subcategories of the steel industry. The Agency's consideration of industry subcategorization included an examination of the same factors and rationale described in its previous studies and the issues raised by the court in *AIISI I* and *AIISI II*. These factors are:

1. Manufacturing processes and equipment
2. Raw materials
3. Final products
4. Wastewater characteristics
5. Wastewater treatability
6. Size and age of facilities
7. Geographic location
8. Process water usage and discharge rates
9. Costs and economic impacts
10. Non-water quality environmental impacts

Based upon these factors, the Agency decided to retain the same approach to subcategorization as outlined in previous regulations which follows the various manufacturing processes in the steel industry. The Agency found that manufacturing process is the most significant factor and divided the industry into 12 main process subcategories for this regulation. Section IV of Volume I of the Development Document contains a detailed discussion of the factors considered and the rationale for selecting the subcategories. The Agency determined that process based subcategorization is warranted in many cases because the wastewaters of the various processes contain different pollutants, requiring treatment by different control systems (e.g., phenol by biological systems in cokemaking and metals by precipitation in steelmaking). However, in some cases, the wastewaters of different processes were found to contain similar characteristics. In those instances, the Agency determined that subcategorization was appropriate because the variations in process water usage and discharge flow rates. A more detailed discussion of this issue is presented in Volume I of the Development Document.

The subcategories of the steel industry are as follows:

(1) Subpart A—Cokemaking Subcategory

Cokemaking operations involve the production of coke in by-product or beehive ovens. The production of metallurgical coke is essential to steelmaking since coke is one of the

basic raw materials necessary for the operation of ironmaking blast furnaces.

(2) Subpart B—Sintering Subcategory
Sintering operations involve the production of an agglomerate which is then used as a raw material in iron and steelmaking processes. This agglomerate (or "sinter") is made up of large quantities of waste particulate matter (fines, mill scale, and flue dust) which have been generated by blast furnaces, open hearth furnaces, basic oxygen furnaces, and recovered from hot forming operations.

(3) Subpart C—Ironmaking Subcategory

Ironmaking operations involve the conversion of iron bearing materials, limestone, and coke into molten iron in a reducing atmosphere in tall cylindrical (blast) furnaces.

(4) Subpart D—Steelmaking Subcategory

Steelmaking operations involve the production of steel in basic oxygen, open hearth, and electric arc furnaces from molten iron and steel scrap materials.

(5) Subpart E—Vacuum Degassing Subcategory

This operation involves the removal of gaseous material (deoxidation) from molten steel by applying a vacuum to the molten steel.

(6) Subpart F—Continuous Casting Subcategory

This operation involves the continuous formation of a primary steel shape (i.e., slab, billet, or bloom) from molten steel by casting the molten steel through a water-cooled mold.

(7) Subpart G—Hot Forming Subcategory

Hot forming is the steel forming process in which hot steel, in solid ingot form, is reduced in size during a series of forming steps into finished and semi-finished steel products.

(8) Subpart H—Salt Bath Descaling Subcategory

Scale removal from specialty steels is accomplished by immersing the steel in molten salt baths of oxidizing or reducing compounds.

(9) Subpart I—Acid Pickling Subcategory

Acid pickling is the process of chemically removing oxides and scale from the surface of steel using dilute inorganic acids.

(10) Subpart J—Cold Forming Subcategory

In cold forming operations, steel products are formed or reduced in thickness or size, or acted upon to produce a smooth surface or to control the mechanical properties of the metal. Rolling solutions are used in cold

forming to cool and lubricate the product during the reduction operation.

(11) Subpart K—Alkaline Cleaning Subcategory

This operation involves the removal of rolling oil or other materials from the surface of steel products prior to further processing. The removal can be enhanced by the electrolysis of the steel in an alkaline solution.

(12) Subpart L—Hot Coating Subcategory

In the hot coating process, clean steel products are immersed in baths of various molten metals to deposit a thin layer of the metal on the product surface.

VIII. Available Wastewater Control and Treatment Technology

A. Status of In-Place Technology

Many different wastewater treatment technologies are currently employed in the steel industry. Generally, primary wastewater treatment systems encompass physical/chemical methods of treatment, including neutralization, sedimentation, flocculation and filtration. Treatment for toxic pollutants require advanced technologies such as biological treatment, carbon adsorption, ion exchange, reverse osmosis, and more sophisticated chemical techniques.

Within the cokemaking subcategory, organic pollutant removal is accomplished by biological treatment in bio-oxidation lagoons and activated sludge plants; and, physical/chemical treatment in ammonia stills, dephenolizers and activated carbon systems. Sedimentation and filtration are also used in this subcategory.

Treatment facilities at plants in the sintering, ironmaking and steelmaking subcategories rely heavily upon flocculation, sedimentation and recycle of treated wastewaters. Clarifiers and thickeners are principally used in connection with polymers and coagulants such as lime, alum, and ferric sulfate.

Wastewaters from nearly all hot forming operations are treated in scale pits followed by lagoons, clarifiers, filters, or combinations thereof. Polymers and coagulants such as lime, alum, and ferric sulfate are normally used in conjunction with clarifiers. Filters are usually either gravity or pressure type with sand or other media.

Cold finishing treatment techniques include equalization prior to further treatment; neutralization with lime, caustic or acid; flocculation with polymer; and, sedimentation. Central or combined treatment systems are common for these operations.

An important treatment method commonly practiced in the steel industry is recycle of treated wastewaters. Recycle can be effectively used to significantly reduce wastewater flows and the amount of pollutants discharged to receiving streams. Systems employing high rates of recycle are demonstrated in several subcategories of the steel industry.

B. Advanced Technologies Considered

The Agency considered advanced treatment systems to control the level of toxic and non-conventional pollutants at the BAT, NSPS, PSES, and PSNS levels of treatment. Some of these include in-plant control, however, most include the installation of additional end-of-pipe treatment components and all are demonstrated in the industry.

Add-on technology to BPT was considered for the BAT, BCT, NSPS, PSES, and PSNS levels of treatment for all of the subcategories. Some of these control measures for the toxic pollutants include two-stage (i.e. extended) biological treatment (cokemaking); granular activated carbon; powdered carbon addition; pressure filtration; pressure filtration accompanied with sulfide addition; and, multi-stage evaporation/condensation systems. Details on these advanced systems are presented in Section VI of Volume I of the Development Document.

IX. Best Practicable Technology (BPT) Effluent Limitations

The factors considered in defining best practicable control technology currently available (BPT) include the total cost of application of technology in relation to the effluent reduction benefits from such application, the age of equipment and facilities involved, the process employed, non-water quality environmental impacts (including energy requirements) and other factors the Administrator considers appropriate. In general, the BPT technology level represents the average of the best existing performances of plants of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or industry. Limitations based upon transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limits. See *Tanners' Council of America v. Train*, 540 F.2d 1188 (4th Cir. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where the

process changes are common industry practice.

The cost-benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify benefits in monetary terms. See, e.g., *AISI I, supra*. In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impact of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies. Therefore, EPA has not considered these factors. See *Weyerhaeuser Company v. Costle*, 590 F.2d 1011 (D.C. Cir. 1978).

A detailed discussion of the bases for selecting the BPT effluent limitations is set forth in Section IX of each subcategory report of the Development Document. The components of the BPT model treatment systems are presented in Appendix D.

X. Best Available Technology (BAT) Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, non-water quality environmental impacts (including energy requirements) and the costs of application of such technology (section 304(b)(2)(B)). In general, the BAT technology level represents, at a minimum, the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different industry or subcategory. BAT may include process changes or internal controls, even when not common industry practice.

The statutory assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser v. Costle, supra*). In developing the BAT limitations, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic

impact of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is effluent reduction capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution. The steel industry discharges over forty different toxic pollutants. EPA considered two to six alternative BAT treatment systems for each subcategory. A detailed discussion of the bases for selecting the BAT effluent limitations is set forth in Section X of each subcategory report of the Development Document. The components of the BAT model treatment systems are presented in Appendix D.

XI. New Source Performance Standards (NSPS)

The basis for new source performance standards (NSPS) under section 306 of the Act is the best available demonstrated technology. Industry has the opportunity to design the best and most efficient steelmaking processes and wastewater treatment technologies for new plants. Congress therefore directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible. EPA considered two to four alternative treatment systems for each subcategory in selecting NSPS.

A detailed discussion of the bases for selecting the new source performance standards is set forth in Section XII of each subcategory report of the Development Document. The components of the NSPS model treatment systems are presented in Appendix D.

XII. Pretreatment Standards for Existing Sources (PSES)

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of Publicly Owned Treatment Works (POTWs). The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for pollutants, such as toxic metals, that pass through POTWs in amounts that would exceed direct discharge effluent limitations or limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards

are to be technology-based and analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which served as the framework for the pretreatment standards for the steel industry, can be found at 43 FR 27736 (June 26, 1978).

EPA has determined that many of the metals present in the steel industry's raw wastewaters pass through POTWs, may limit POTW sludge disposal alternatives and can interfere with biological treatment in POTWs. These metals include: antimony, arsenic, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc.

Accordingly, EPA is promulgating pretreatment standards for metals and other toxic and non-conventional pollutants in this regulation. In addition to the factors discussed above, EPA considered the following factors in developing the pretreatment standards:

1. The manufacturing processes employed by the industry;
2. The age and size of the equipment and facilities involved;
3. The location of manufacturing facilities;
4. Process changes;
5. The engineering aspects of the application of pretreatment technology and its relationship to the POTW;
6. The cost of application of technology in relation to the effluent reduction and other benefits achieved from such application; and,
7. Non-water quality environmental impacts (including energy requirements).

The methodology used to develop the pretreatment standards is the same as that used to develop the direct discharger effluent limitations. A detailed discussion of the bases for selecting the pretreatment standards for existing sources is set forth in Section XIII of each subcategory report of the Development Document. The components of the PSES model treatment systems are presented in Appendix D.

XIII. Pretreatment Standards for New Sources (PSNS)

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation. The

Agency is promulgating PSNS based on the same considerations discussed in Section XI relating to PSES.

A detailed discussion of the bases for selecting the pretreatment standards for new sources is set forth in Section XIII of each subcategory report of the Development Document. The components of the PSNS model treatment systems are presented in Appendix D.

XIV. Best Conventional Technology (BCT) Effluent Limitations

The 1977 Amendments added Section 301(b)(4)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(b)(4)—BOD, TSS, fecal coliform, and pH—and any additional pollutants defined by the Administrator as "conventional." On July 30, 1979, the Agency added oil and grease as a conventional pollutant (44 FR 44501).

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of a new "cost-reasonableness" test, which involves a comparison of the cost and level of reduction of conventional pollutants from the discharge of publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources. In its review of BAT for "secondary" industries, the Agency established BCT levels based upon a methodology described at 44 FR 50732 (Aug. 29, 1979). This methodology compared removal costs (dollars per pound of pollutant, measuring from BPT to BCT) with costs for an average POTW. The removal costs of an average POTW was established by EPA as \$1.34 per pound in July, 1978 dollars. However, the Fourth-Circuit has remanded the regulation to the Agency for reconsideration with instructions that EPA revise its cost-effectiveness test. (*American Paper Institute, et al. v. Costle*, No. 79-1551). The Agency is presently considering those revisions.

XV. Summary of Public Participation

Between November 1979 and April 1980, EPA circulated nine individual volumes, which together comprise the EPA contractor's draft technical report on its steel industry study, including available treatment alternatives and costs. The draft technical report was distributed to a number of interested parties, including the American Iron and

Steel Institute and several member firms, the Natural Resources Defense Council (NRDC), and affected state and municipal authorities. This document did not include recommendations for proposed effluent limitations and standards, but rather presented the EPA Contractor's draft technical report on treatment alternatives available, costs, and other information relating to this regulation. A meeting was held in Washington, D.C. on May 19, 1980 for public discussion of comments on this document.

The Agency published the proposed regulation on January 7, 1981. Based upon several requests from the industry to extend the comment period, the Agency set May 8, 1981 as the close of the comment period on the proposed regulation. EPA representatives continued to meet with representatives of the steel industry and other members of the public after May 8, 1981 to discuss certain issues relating to the Agency's preparation of the Regulatory Impact Analysis concerning this regulation. The Regulatory Impact Analysis is being prepared pursuant to Executive Order 12291. In addition, Agency representatives met with officials of steel companies which owned plants for which the Agency was considering establishing alternative BAT effluent limitations for their central treatment facilities (see discussion Section XIII of the preamble). The Agency informed the public of its intent to hold these meetings by publishing a notice in the *Federal Register* in 1981 (46 FR 32274) and summarized the data and comments presented at the meetings in memoranda which were promptly placed in the public docket for this regulation.

XVI. Response to Public Comments

The following general issues raised by the industry and the public are addressed below. Because of the Agency received a large number of comments on the proposed regulation, it has not addressed each of those comments in this preamble. Instead, the major comments and the Agency responses are set out in the preamble. Responses to other comments are contained in a separate document available from Mr. Ernst P. Hall, Effluent Guidelines Division at the address noted at the beginning of this preamble.

1. *Regulation of the Steel Industry Beyond the Current Level of Discharge.* The AISI and some of its member companies have commented that the Agency should not establish effluent limitations and standards for the steel industry which would require more stringent control than existing treatment. To support its position, the industry

cites the significant removal of toxic and conventional pollutants from raw waste loadings to the current level of discharge. NRDC and others, however, commented that the proposed BAT limitations are appropriate and, in some cases, more stringent limitations should be established.

(a) *BPT Limitations.* The BPT limitations in this regulation are based upon traditional, well established water pollution control technologies. The final BPT limitations are based upon the average of the best existing performances of steel industry water pollution control facilities, and, in some cases are less stringent than might otherwise have been justified. Indeed, on balance, about eighty percent of the industry is presently in compliance with these limitations.

(b) *BAT Limitations.* Those BAT limitations in this regulation which are more stringent than BPT are based upon traditional water pollution control technologies which are generally demonstrated on a full scale basis in the steel industry. Based on the statute, the Agency does not have discretion to set any less stringent requirements.

2. *Regulation of the Hot Forming Subcategory at the BAT Level.* Industry representatives commented that the Agency should not promulgate BAT limitations for hot forming operations because toxic metals are not contributed by hot forming processes to hot forming wastewaters. Industry representatives also commented that BAT limitations for suspended solids and oil and grease should be established at a level no more stringent than BPT. Environmental groups commented that the BAT limitation for hot forming operations should be zero discharge.

In response to these comments, the Agency reviewed its existing data for the hot forming subcategory and conducted additional extensive sampling programs at fifteen hot forming operations in cooperation with the industry. These data clearly demonstrate that significant quantities of toxic metals are generated by hot forming operations, are present in hot forming raw wastewaters, and are also present in the wastewaters discharged and from the primary scale pits used to recover mill scale. These data also demonstrate that toxic metals are removed to very low levels at plants with the model BPT treatment system installed (i.e., primary scale pit, partial recycle, secondary settling, and filtration). The average gross effluent concentration of all toxic metals in the wastewaters of these plants after treatment is about 0.07 mg/l. The

Agency believes that at these levels, the toxic pollutants have been effectively controlled and that the substantial cost (more than \$300 million on an industry-wide basis) of full scale (96%) recycle of these wastewaters to further reduce the discharge of toxic metals is not justified.

While zero discharge is reported to be achieved at some hot forming operations, the Agency found that many of these systems do, in fact, have small, and often intermittent, discharges. The Agency does not believe that zero discharge can be achieved at all hot forming operations without the use of costly evaporative technologies. The data for several hot forming operations demonstrate that wastewater recycle rates of 95 to 99% are achievable on a long term basis.

Based upon these factors, the Agency has not promulgated BAT limitations for the hot forming subcategory. As explained in greater detail in the development document, the final BPT limitations were revised from those proposed to take into account actual performance of the BPT technology with respect to suspended solids, oil and grease, and flow. The Agency has maintained high rate recycle (96%) as the basis for NSPS as this technology is well demonstrated throughout the industry and will substantially reduce the total loadings of pollutants discharged by the process.

3. *Central Treatment.* The Agency has received numerous comments from AISI and its members suggesting that it create a subcategory within the regulation which allows for central or combined treatment of wastewaters from various subcategories.

The Agency has not included a central treatment subcategory in this regulation. There are numerous combinations of central wastewater treatment systems that can and are being employed, ranging from individual recycle systems followed by central treatment of blowdowns and once-through flows, to total plant-wide recycle systems with treatment of the blowdown. Often these combinations include the mixing of wastewaters which are not compatible for effective co-treatment. These combinations are so numerous, that it is not possible to define a central treatment subcategory which would effectively regulate the discharge of toxic pollutants. The reduction in discharge flow and treatment of more concentrated wastewaters provides the toxic pollutant loading removal to be achieved by industry's compliance with this regulation. When incompatible wastewaters are mixed, the toxic pollutants are diluted and thus are not

significantly removed or reduced. Consequently, the discharge of large quantities of toxic pollutants would occur as a result of the indiscriminate mixing of incompatible wastewaters.

Based upon the above considerations, the Agency believes that the development of a central treatment subcategory which provides for effective regulation of toxic pollutants is neither possible nor appropriate. However, the Agency has made co-treatment of compatible wastewaters possible with this regulation by carefully selecting the toxic pollutants to be limited for each subcategory. Where the Agency determined that co-treatment is appropriate, the Agency has, as discussed in greater detail below, established the effluent limitations so as to permit co-treatment. The limitations applicable to a central treatment facility in which compatible pollutants are co-treated are the sum of the applicable effluent limitations for the individual subcategory processes tributary to the central treatment facility.

By establishing limitations which permit co-treatment in appropriate cases, the Agency believes it has satisfactorily resolved this issue. The Agency has concluded that wastewaters from the following groups of subcategories can be treated together to achieve the final limitations and standards:

Group and Subcategory

1. Cokemaking
2. Sintering, ironmaking
3. Steelmaking, vacuum degassing, continuous casting, acid pickling (H_2SO_4 , HCl), cold rolling, alkaline cleaning, hot coating
3. Specialty steel operations, salt bath descaling, acid pickling (combination), cold rolling

In developing the regulation so as to permit co-treatment of wastewaters for the subcategory groups, the Agency decided not to allow extensive co-treatment of cokemaking wastewaters with other process wastewaters. The Agency considered the nature of cokemaking wastewaters and the biological treatment currently used to treat those wastewaters in developing the BAT limitations, and believes that cokemaking wastewaters should be treated separately to insure the effective removal of toxic and non-conventional pollutants. However, in some limited cases, combined treatment of cokemaking and ironmaking wastewaters may be appropriate and can be used to achieve the combined limitations for those operations.

The Agency also believes that unrestricted co-treatment of

wastewaters from hot forming operations with wastewaters from other subcategories is not appropriate because of the dilution of toxic pollutants by the high volume hot forming wastewaters and potential analytical detection problems. However, central treatment of hot forming wastewaters with wastewaters from other subcategories may be appropriate provided that the metal bearing wastewaters are adequately pretreated prior to mixing with hot forming wastewaters, or, provided that hot forming wastewaters are recycled to a high degree (i.e., greater than 95%). It is not possible for the Agency to establish all of the conditions which define precisely when co-treatment of hot forming wastewaters with wastewaters from other subcategories would be appropriate. These determinations will have to be made on a case-by-case basis. Where hot forming wastewaters are not recycled it may be appropriate to limit toxic pollutants prior to the mixing of wastewaters from other subcategories with hot forming wastewaters.

In developing this central treatment policy, the Agency took into account that at many older steel plants cooling water, surface runoff and roof runoff are drained into existing central treatment systems. As discussed in greater detail below, the Agency believes that dischargers can take the steps necessary to divert these non-process wastewaters from their co-treatment facilities at a reasonable cost so as to achieve the limitations established by this regulation. However, the Agency recognizes that while separation of these non-process waters has been accomplished at many steel plants (including many older steel plants), it may be inordinately expensive to do so at a small number of plants.

The Agency believes its model treatment system cost estimates, which are based upon more costly separate treatment systems for each operation, are sufficiently generous to cover site-specific and retrofit costs associated with upgrading most existing central treatment systems to the point where the BPT and BAT limitations can be achieved (including segregation of non-process wastewaters). However, the Agency recognizes that there may be instances at certain plants where, because of unique site-specific factors, the BPT and BAT limitations or PSES may not be achievable without the expenditure of amounts disproportionately higher than those estimated by the Agency. In such instances, the Agency believes that the

dischargers should receive alternative BPT and BAT limitations and PSES.

Prior to issuing the proposed regulation, the Agency met with representatives of AISI and its member companies regarding those plants which they believed were entitled to alternative effluent limitations or inclusion in a central treatment subcategory. At those meetings, the Agency explained that the consideration of whether a plant should be subject to alternative effluent limitations could occur either in the context of this regulation or during the permit issuance process. The industry representatives presented data for 35 plants and requested that the Agency evaluate whether those plants should receive alternative limitations and to do so in the context of the effluent limitations guidelines. Based upon those data, and its independent evaluation of the problem, the Agency identified seven plants in the preamble to the proposed regulation which it believed might be entitled to relief from the generally applicable limitations proposed on January 7, 1981. These plants were listed in the preamble to the proposed regulation and are again listed below:

Plant and location	Central treatment facility
1. Armco Steel, Ashland, KY.....	Total plant.
2. Bethlehem Steel, Sparrows Point, MD.....	Humphrey's Creek.
3. Bethlehem Steel, Burns Harbor, IN.....	Total plant.
4. National Steel, Granite City, IL.....	Total plant.
5. Republic Steel, Gadsden, AL.....	Total plant.
6. U.S. Steel, Lorain, OH.....	Pipe mill lagoon.
7. U.S. Steel, Provo, UT.....	Total plant.

The Agency requested comment on whether these seven plants should be subject to alternative effluent limitations. In addition, the Agency requested comment on whether any other plants should be subject to alternative effluent limitations. In response, the Agency received comments that fourteen additional plants should be considered for alternative effluent limitations (some of which were included in the original list of thirty-five plants presented by AISI). These plants are as follows:

Plant and location	Central treatment facility
1. Ford Motor Co., Dearborn, MI.....	Schaefer Road treatment plant.
2. Interlake, Inc., Riverdale, IL.....	Discharge to POTW.
3. J & L Steel, Aliquippa, PA.....	Chemical rinse treatment plant—outfall 019.
4. J & L Steel, Cleveland, OH.....	Hot forming and finishing treatment plant.
5. J & L Steel, Hennepin, IL.....	Total plant.
6. J & L Steel, Louisville, OH.....	Total plant.

Plant and location	Central treatment facility
7. J & L Steel, East Chicago, IN.	Terminal treatment plant.
8. Laclede Steel, Alton, IL.	Total plant.
9. National Steel, Portage, IN.	Total plant.
10. National Steel, Wierton, WV.	Outfall B.
11. Republic Steel, Chicago, IL.	Discharge to POTW.
12. U.S. Steel, Fairless Hills, PA.	Terminal treatment plant.
13. U.S. Steel, Gary, IN.	Terminal lagoons.
14. U.S. Steel, Chicago, IL.	Discharge to POTW.

¹ The request for alternative effluent limitations for these plants are for the indirect discharges to POTWs.

The Agency believes that these 21 central treatment facilities comprise all, or nearly all, of those facilities which might qualify for alternative effluent limitations. However, these comments were based upon the expected cost of bringing the plants into compliance with the proposed regulation. Because the Agency is promulgating a regulation which, in some instances, is significantly less expensive to comply with, the Agency is uncertain whether the commenters believe that their plants would still qualify for alternative effluent limitations under the previously described standard (cost of compliance significantly higher than that estimated by the Agency). This is especially so in light of the elimination of BAT limitations for hot forming operations. Compliance with those limitations was expected to be quite costly and in many cases was included as a basis for a commenter's request for alternative effluent limitations. The Agency was not in a position to resolve this issue before the promulgation of this regulation. As discussed previously, the Agency is under a court-ordered deadline to promulgate this regulation and does not believe that it would be appropriate to delay its promulgation until this issue was resolved for the 21 central treatment facilities.

Consequently, the Agency decided to promulgate the regulation but to temporarily exclude the 21 central treatment facilities from its requirements until the Agency resolves the issue. The exclusion will serve to provide an opportunity for operators of the 21 central treatment facilities which asserted that they are entitled to alternative effluent limitations based upon the proposed regulation to present their views on whether any of the twenty-one plants or central treatment facilities are entitled to alternative effluent limitations based upon the final regulation. These applications must be submitted within sixty days after publication of this regulation. Any of the twenty-one plants or central treatment facilities which do not reapply for

consideration during this sixty-day period will have waived their applications for alternative effluent limits.

The applications must include the following information:

(1) A schematic diagram of the existing wastewater treatment facility showing each source of wastewater, cooling waters, and other waters entering the treatment facility; discharge and recycle flow rates for each source, and each major treatment component;

(2) Existing monitoring data relating to discharges to and from the central treatment facility including pollutant concentrations, wastewater flows and mass loadings. As a minimum, monitoring data should be provided for a six month period of normal operation of the production and treatment facilities. The complete data as well as a data summary including the maximum, minimum, and mean gross discharge loadings and the standard deviation of the discharge loadings for each monitored pollutant should be provided. Any supplemental monitoring data for toxic pollutants should also be provided.

(3) A scale map of the area of the plant served by the wastewater treatment facility, including the treatment facility and water supply and discharge points.

(4) An estimate of the least costly investment required to meet the generally applicable limitations or standards for the facility and a description of the treatment system including schematic diagrams showing the major treatment system components and flow rates through the system. At a minimum, the cost estimates should consist of a single page summary for each water pollution control system showing estimated installed direct cost totals for mechanical equipment; piping and instrumentation; foundations and structural components; and electrical components. Indirect costs for contingencies, overhead and profit, engineering fees, and any other indirect costs must be itemized separately. The sum of the direct and indirect costs, which represents the owner's or operator's total estimate, must be shown.

(5) The effluent limitations or standards which could be achieved if the discharger were to spend an amount equal to the Agency's model treatment system cost estimate for the facility and the treatment facilities which would be used to meet those limitations or standards; schematic diagrams and cost estimates as outlined in paragraph (5) above should be provided for each treatment system.

(6) Production rates in tons per day for each process contributing wastewater to the central treatment facility consistent with those reported by the owner or operator in the NPDES permit application for the central treatment facility.

If the Agency determines that the expected cost of compliance with the generally applicable limitations for any of the central treatment facilities is so high in comparison to the Agency's model treatment system cost estimate for that facility that the applicable limitations or standards would not represent BPT, BAT, BCT, or PSES, as the case may be, for the facility, it plans to propose alternative limitations or standards based upon the level of treatment which can be achieved at that facility through the installation of treatment equipment which costs in the range of the Agency's model treatment system cost for that facility.

The Agency intends that the temporary exclusions for these 21 central treatment facilities apply for only the minimum period necessary for it to review the comments, propose alternative limitations or standards where appropriate and take final regulatory action with respect to those facilities. This is not to exceed one year from the date this regulation is published.

Owners and operators of these 21 facilities which still believe that they are entitled to alternative effluent limitations or standards based upon the high cost of complying with the generally applicable limitations under these regulations must raise that issue within 60 days of publication of this regulation. They will not be entitled to request similar relief during the permitting process through the "fundamentally different factor" variance process at the permitting stage. However, they may request relief through the variance provision based on any other permissible basis.

The Agency noted in the preamble to the proposed regulation that the issue of wholly disproportionate costs could be properly handled either in the context of this regulation or, alternatively, at the permit writing stage, under the "fundamentally different factor" variance provisions (40 CFR 125.31(b)(3)). The Agency also stated that, where feasible it would like to resolve this issue in the context of this regulation. The Agency has concluded that it is feasible to resolve this issue in the context of this regulation for the 21 central treatment facilities which requested consideration during the comment period. Because the Agency

can resolve this issue efficiently in the context of this regulation for the 21 central treatment facilities and provide for consistency in both deciding whether to establish alternative effluent limitations and what the limitations should be, it has decided to resolve this issue solely in the context of this regulation for those facilities.

While the Agency believes that the 21 central treatment facilities comprise all, or nearly all, of the facilities which might qualify for alternative effluent limitations, it is not restricting the right of the owner or operator of any other facility to request relief from the generally applicable limitations during the permitting process through the "fundamentally different factors" variance process.

4. *Costs of the Regulation.* The Agency received several comments from the industry regarding the Agency's cost estimates of the model treatment systems used as the basis for the proposed limitations, and on the cost estimates for those model treatment systems presented in the contractor's draft technical report (October 1979) distributed for comment by the Agency. The industry commented that the Agency's cost estimates are substantially lower than industry cost estimates for the same treatment systems, and that the lower cost estimates would cause the Agency to underestimate the economic impact of the regulation on the industry.

In response to these comments and court remand issues on prior regulations dealing with costs, the Agency carefully analyzed and refined its costing methodology and cost estimates for steel industry water pollution control systems. Based upon this analysis, the Agency has reached the following conclusions:

1. The Agency's costing methodology is appropriate for developing industry-wide cost estimates for water pollution control systems that may be installed to comply with this regulation.

2. Agency cost estimates compare favorably with actual costs incurred by the industry for the installation of model water pollution control systems, including retrofit and other site-specific costs.

3. The costs actually incurred by the industry would have to be significantly greater than those estimated by the Agency to produce any significant short or long term adverse economic impacts. For example, even if the actual cost of compliance were one hundred percent greater than EPA's estimates, there would not be any significant economic impacts which would change the Agency's conclusion regarding the

economic achievability of this regulation.

The Agency's industry-wide cost estimates for compliance with the proposed regulation are based upon model wastewater treatment systems developed for each level of treatment (BPT, BAT, BCT, PSES, NSPS, and PSNS) for each subcategory. The size of the model treatment system is defined by the average sized production operation and the design or model treatment system flow rate. The model treatment systems are composed of standard process and wastewater treatment components (i.e., pumps, clarifiers, thickeners, vacuum filters, chemical reaction tanks, pressure filters, piping, concrete foundations, buildings). Numerous cost estimates for each of these components were developed through the use of standard engineering cost estimating references including quotes from vendors of pollution control equipment. Costs for each component of the model treatment systems were aggregated with standard estimates for site specific costs (see Development Document) to arrive at the total investment costs for each model treatment system. These model treatment system costs were scaled by production (0.6 factor) for each production facility to develop the total industry-wide investment to comply with the proposed BPT limitations. The industry-wide cost to comply with the proposed BAT limitations was determined by multiplying the model treatment system cost by the number of plants in each subcategory.

The BPT investment cost required for treatment facilities not in-place as of January 1, 1978 was determined by subtracting costs for in-place treatment facilities reported by the industry on a plant by plant basis. Rough estimates were made of the treatment facilities installed between January 1, 1978 and June 30, 1980 by subcategory to develop required BPT costs for the economic impact analysis. Similar estimates were made for the BAT costs.

In determining industry-wide costs, the Agency costed separate wastewater treatment facilities for each process operations without taking into account extensive co-treatment of compatible wastewaters practiced at many plants. Thus, for many steel plants, several treatment facilities were costed where only one central treatment plant exists. This tends to overstate industry-wide costs.

For the final regulation, the above methodology was refined. First, additional cost data for several wastewater treatment components reported by the industry were included

in the data base. Second, the large number of individual treatment component cost estimates originally developed were reviewed and adjusted to better reflect changes in flow. The model treatment systems were recosted with computer assisted determinations of component cost by model flow rate. Third, the aggregate costs for BAT and PSES, as well as costs for BPT, were determined by scaling the model treatment system costs by production for each facility. Finally, a detailed plant-by-plant update was completed for treatment facilities installed from January 1, 1978 to July 1, 1981. This update was completed from NPDES compliance records, contact with industry representatives, and personal knowledge of selected plants by EPA staff.

The draft Development Document presents comparisons on a subcategory basis of treatment system costs reported by the industry, and the Agency's estimated costs for the same treatment facilities. The actual costs reported by the industry include site-specific and retrofit costs, where available. These comparisons demonstrate the Agency's costing methodology is appropriate for developing industry-wide cost estimates. In its comments on the costs of the proposed regulation, the industry did not provide any comments on these comparisons, but rather presented its *estimates* of costs for selected treatment facilities and used these estimates to develop industry-wide cost estimates which are significantly higher than those developed by the Agency. These estimates are also significantly higher than those reported by AISI in its 1981 report "Environmental Policy for the 1980's: Impact on the American Steel Industry." The latter estimates for required water pollution control costs for the period 1981-1984 are within 10% of those developed by the Agency for the proposed regulation.

Since the Agency's cost estimates are well within the range of actual industry costs for installed treatment facilities, the Agency believes its cost estimates for required water pollution control facilities will also be within the range of actual industry costs.

Reference is made to Volume I of the Development Document for the subcategory cost comparisons and additional information regarding the Agency's costing methodology. Reference is also made to the subcategory reports of the Development Document for subcategory-specific cost changes which were made in response to industry comments. These include increased energy usage for the

cokemaking subcategory and increased chemical usage and costs for the cokemaking, ironmaking, and acid pickling subcategories. Changes in model treatment system investment costs were made in several subcategories because of changes in wastewater treatment technology (i.e., deletion of filters in cokemaking and steelmaking, deletion of cascade rinse systems for acid pickling and hot coatings).

The economic impact analysis of the costs of this regulation demonstrates that there are only minimal short term and virtually no long term adverse economic impacts associated with this regulation. Within a fairly broad range of higher water pollution control costs, the economic impacts of the regulation are expected to increase proportionally to cost. Thus, an increase in water pollution control costs by a factor of two or three would still produce relatively small adverse economic impacts. (Section XXI of this preamble).

5. Economic Impact Analysis. The Agency received several comments on its economic analysis of the proposed regulation and, based upon these comments, the economic analysis of the final regulation was modified. The economic analysis of the proposed regulation projected the economic impacts of the regulation under three scenarios which reflected different economic conditions. The Agency developed these scenarios for the analysis because, at that time, it was uncertain which economic conditions would be prevailing at the time of promulgation of the final regulation. For the final regulation, the Agency analyzed two scenarios. Both scenarios are based upon the existing economic climate including the projected effects of present tax, trade, and pricing policies. The only difference between the two scenarios is their assumptions regarding projected steel shipments. As noted in Section XXI, the Agency has concluded that the economic impact of the final regulation is not significant under either scenario and that the limitations and standards are economically achievable.

Several steel industry commenters argued that the economic impacts of the proposed regulation—a 5 percent reduction in the industry's workforce, a 4.9 percent reduction in its domestic market share along with associated balance of trade effects—should not be considered economically achievable. Several environmental groups believed that a 0.5 to 0.8 percent increase in the price of steel resulting from the regulation was not too much for

consumers to pay. The Agency expects the economic impacts of the final regulation to be shorter in duration and of much less magnitude than those predicted for the proposed regulation: 0.6 percent or less of the industry's workforce and domestic market share, and a 0.6 percent price increase. The only impact which is expected to last after the early 1990s is the projected price increase. This change in the projected economic impact resulted from a reduction in expected cost of compliance with the regulation, a more recent forecast of the industry's future shipment levels and an update in the economic impact methodology.

The commenters noted that the magnitude of the economic impact of the water pollution control regulation depends significantly upon the future level of steel shipments. An environmental group suggested that the alternative scenario—which projected the highest level of shipments and the smallest impact—was the most reasonable. That commenter quoted financial market sources to support this view. Several industry commenters suggested that the intermediate scenario economic analysis should be based upon a 1.5 percent annual growth rate rather than upon a 2 percent growth rate. Industry commenters also suggested that the Agency should not base the economic analysis (and therefore projected steel shipments) upon expected changes in government tax, trade and price control policies.

As explained earlier, the economic analysis of the final regulation is based upon the existing economic condition of the steel industry including the projected effects of present trade, tax and pricing policies. Under the scenario which projects the more prolonged economic impact, the annual growth of steel production during 1985–1990 is projected to be about 1% or less. This annual growth rate is representative of the overall growth rate projected under that scenario as it measures annual growth rate in steel production from one peak of an economic cycle to the next peak. Hence, the Agency believes that it has adequately considered the range of expected steel industry shipments in its economic analysis.

The Agency's analysis concludes that steel companies will meet the capital requirements of this regulation by cutting back investment in its existing plant and equipment. A commenter suggested that the steel industry has access to additional funds for pollution control that would not require reducing investment in its existing capital stock (i.e., from industrial revenue bonds,

common stock issues and reduced dividend payments). The Agency disagrees with this comment. While industrial revenue bonds are issued by government agencies, they are the legal obligations of private firms and are considered as such by credit analysts. Thus, industrial revenue bonds cannot be used to increase the funds available to a capital-constrained industrial firm which must maintain the quality of its credit. Moreover, the Agency does not believe that steel companies will undertake the issuance of new common stock, or the financially similar action of reducing dividend payments, until they can demonstrate a higher future profitability. Consequently, the Agency believes that its conclusion regarding capital financing requirements reflects the financial situation facing the steel industry and is valid.

The Agency's economic analysis is based, in part, upon the assumption that the added costs of water pollution control will be passed-through to the consumers of steel products. One commenter suggested that these added costs would be only partially passed-through. In the last ten years, the steel industry's operating costs (whether or not related to water pollution control) have increased nearly 150 percent, and, all but a few percent of these costs have been passed-through to consumers in the form of price increases. The Agency believes that the additional 0.6 percent increase in cost which is expected to result from compliance with this regulation will also be fully passed-through to consumers.

Several commenters suggested the Agency should evaluate the economic impact of alternative wastewater treatment systems not selected by the Agency. Moreover, the commenters suggested that the Agency's economic analysis should account for potential cost savings to the industry resulting from the water bubble and co-treatment policies. The Agency does not agree. In selecting the model treatment systems, the Agency considered the costs of the various alternative treatment systems and their respective effectiveness in reducing pollutant discharges. After selecting the model treatment systems, the Agency performed its economic analysis to determine expected economic impacts and whether the limitations and standards are economically achievable. The analysis is based upon the conservative assumption that steel plant wastewaters from each operation would be treated separately and not include an allowance for possible savings associated with the co-treatment and water bubble policies.

The potential cost savings associated with those policies cannot be estimated with a reasonable degree of accuracy because they are highly variable and site-specific in nature. The Agency believes that these conservative assumptions are appropriate and that the economic analysis demonstrates that the limitations and standards are economically achievable even without an allowance for those potential savings. The Agency does not believe it is necessary to assess the economic impact of each alternative treatment system considered by the Agency.

One commenter suggested that the Agency separately evaluate the economic impact of the regulation for each subcategory. The Agency disagrees with this comment and believes that it is neither required to do so nor would such an analysis be feasible. All subcategory operations in the steel industry are typically located within large, integrated plants. A steel company's decisions regarding production from, and investment in, these subcategory operations are highly interrelated. As a result, the economic impact of pollution controls for a given subcategory cannot be meaningfully determined.

Several industry commenters suggested that the loss of salaried jobs in the steel industry should be included in the economic analysis. The Agency agrees with this comment and has included the loss of salaried jobs in its evaluation of the final regulation.

One commenter argued that 10 million tons of capacity expansion projected in the intermediate scenario for the 1988-1990 time period is not possible. The Agency disagrees. EPA believes that the industry has demonstrated the capability of expanding capacity at a rate assumed under the economic analysis and that economic conditions will permit that expansion. For example the industry expanded raw steel capacity by at least 17 million tons during the period 1963-65.

6. *Merchant Coke and Pig Iron.* The Agency received several comments from merchant coke and pig iron producers regarding the appropriateness of including merchant coke producers in the steel industry regulation; the potential economic impact of the proposed regulation on these industries; the Agency's lack of separate consideration of the economic impact of the proposed regulation on the merchant coke industry; and, the cost of operation of the model treatment technologies.

In response to these comments, the Agency reviewed merchant coke operations and found them to be essentially the same as steel industry cokemaking operations with respect to

raw materials, production processes and by-product recovery, final products, wastewater characteristics, wastewater treatability, age of facilities, geographic location, process water usage, and non-water quality environmental impacts. While the merchant coke industry has different markets for its products, this fact is not relevant to any of the above factors or to whether merchant coke operations should be subject to this regulation. For these reasons, the Agency concluded that merchant cokemaking operations should be subject to the effluent guidelines regulation for the steel industry, rather than the effluent guidelines limitations for other industries, (i.e. the Organic Chemicals Category or the Secondary Metals Industry as suggested by one commenter). The Agency did find, however, that merchant coke plants tend to be smaller than steel industry coke plants and that merchant plants have slightly higher wastewater discharge rates.

Because of the smaller size of these facilities, the Agency has developed separate cost models for direct and indirect merchant coke dischargers. With respect to the commenter that suggested that the Agency should employ a separate economic impact analysis for merchant coke producers, the Agency agrees. Upon reevaluation, the Agency has concluded that its policy testing model (PTM Steel) used in the economic impact analysis is not appropriate for analyzing the economic impact of this regulation upon merchant coke producers. Hence, the Agency conducted a separate economic impact analysis of merchant coke and pig iron producers.

EPA sent questionnaires soliciting specific financial data to the two known pig iron producers and to eleven merchant coke producers covering all but one merchant coke operation. This operation is in compliance with the BAT limitations and had previously incurred the associated investment costs. The Agency estimates the following costs of compliance with this regulation for merchant coke producers:

[Millions of 1980 Dollars]

	Investment costs—facilities required	Annual costs—incremental
BPT.....	3.0	0.8
BAT.....	5.5	1.6
PSES.....	10.3	2.6
Total.....	18.8	5.0

The Agency analyzed the economic impacts of compliance with this regulation for the merchant coke industry by examining its effects upon two key parameters: (a) Annual costs as a percentage of total cash flow, and (b) debt-to-capitalization ratio. As shown above, the incremental annual cost for all levels of treatment is about \$5.0 million (including refunding of debt), which is about 20 percent of the estimated cash flow for 1980. The Agency estimates that this added annual cost will cause prices to increase by 0.4 percent. Based upon the assumption that the \$18.8 million capital investment which is required to comply with the regulation is funded entirely by debt, the merchant coke industry debt-to-capitalization ratio is projected to move from 39.1 percent to about 39.6 percent.

Based on a current annual capacity of 9.5 million tons per year, the replacement value of the merchant coke industry at \$220 per ton would be \$2.1 billion. Total capital costs for compliance are projected to be \$18.8 million, or less than one percent of the replacement value. If the pollution control expenditures are diverted from capital expenditures which would otherwise be made to maintain production equipment, the Agency projects a loss of productive capability of about 0.9 percent. As a result, in future periods of capacity constraints, about 0.9 percent of production (or about 85,500 tons) would be lost to foreign producers. The Agency projects only minor economic impacts for merchant coke producers and found that the costs of the regulation are unlikely to force closure of any plant.

Based upon the above considerations, and taking into account the slightly higher water use rates exhibited by merchant coke plants, the Agency is promulgating separate effluent limitations and standards for the merchant coke producers which are slightly less stringent than those for cokemaking operations associated with steel production. For those few merchant coke producers with ancillary tar processing operations, appropriate allowances to the mass-based effluent limitations provided by this regulation should be made at the time of permit writing to take into account the process wastewaters from tar processing.

The Agency also conducted a similar review of the two known pig iron operations and concluded that they should be subject to the effluent guidelines regulation for the steel industry. The Agency estimates that these merchant pig iron producers will have to spend \$1.91 million to comply

with the BPT requirements and an additional \$0.73 million to comply with BAT. The associated annual cost is \$0.5 million. This annual cost is expected to increase prices by about 0.2 percent.

Based on an industry capacity of 1.2 million tons per year and a replacement cost of \$92 per ton, the total capital expenditure required to comply with the regulation represent 2.4 percent of the industry's replacement value. In periods of future capacity constraints, which at present appear unlikely, reductions in production of as much as 2.4 percent could be attributed to added water pollution controls. During such periods, employment would be impacted by a similar percentage. The Agency concluded that any future retirement of pig iron furnaces would most likely result from declining industry profitability and market share rather than from the costs of added water pollution controls.

7. *Consumptive Use of Water.* a. One commenter suggested that EPA had failed to adequately consider the impact of the proposed limitations on water consumption. The commenter contends that EPA has failed to accurately estimate the water consumption associated with industry's compliance with the regulation; failed to consider the adverse impact which this water consumption would have on users of water downstream from the commenter; and, failed to account generally for the water scarcity problems of the arid and semi-arid western states.

In response to the court's remand on this issue, EPA undertook an extensive analysis of the water consumption impact of both the proposed regulation and this final regulation. The manner in which the Agency examined this issue, and the bases for its conclusions, are presented in detail in Section III of Volume 1 of the Development Document. The Agency estimated the water that will be consumed by the various water pollution control systems available for use in the steel industry. Based on the assumption that the industry will use evaporative cooling devices, the Agency estimates the water loss to be only 0.35 percent of the daily flow of steel industry process waters at the BPT level and less than 0.01 percent of daily flow at the BAT level. The water consumption associated with this regulation is insignificant on a nationwide basis.

Moreover, the Agency surveyed the following four steel plants which it considers to be the only major plants located in arid or semi-arid regions of the country.

0196A CF&I Steel Corporation, Pueblo, Colorado

0448A Kaiser Steel Corporation, Fontana, California

0492A Lone Star Steel Company, Lone Star, Texas

0864A United States Steel Corporation, Provo, Utah

Based upon information provided by these companies, the Agency found that at those plants, virtually all of the recycle and evaporative cooling systems included in the model treatment systems used to develop the limitations and standards contained in this regulation have been installed or are under construction, or alternate methods of achieving the limitations are being practiced. Consequently, compliance with the regulation will not result in any substantial incremental water consumption at the major plants located in arid or semi-arid regions.

Although the commenter noted above suggested the Agency failed to account for water consumption associated with "drift" (as opposed to evaporation) from wet cooling towers, that loss of water was accounted for in the Agency's estimate of water consumption (0.1% of circulating water flow).

The commenter also suggested that the increased water consumption which will result from compliance with this regulation will adversely affect downstream users of water including agricultural and industrial users. Beyond the Agency's determination that the adverse impacts associated with the estimated increase in water consumption is justified by the benefit of reducing the pollutant load discharged to achieve the limitations, EPA is not able to properly consider the site specific factors cited by the commenter in this rulemaking. Such site specific non-water quality environmental factors may be considered in a request for a variance by an NPDES permit applicant (See 40 CFR 125, Subpart D). The Agency notes that the commenter is located in a state which has been delegated the authority to administer the NPDES program. The permitting authority which will issue the permit and consider any requests for a variance is uniquely suited to account for the regional and state concerns cited by the commenter.

b. The commenter also suggests that the Agency is ignoring section 101(g) of the CWA by proposing limitations which will result in increased water consumption. The commenter suggests that section 101(g) recognizes the primacy of state water laws and allocation systems over the CWA.

EPA does not agree with the commenter's conclusion regarding the primacy of state water laws over the CWA. The court, in *ASI II*, noted the primacy of the CWA over state water laws is based upon the Supremacy Clause of the U.S. Constitution. That conclusion is equally applicable now and the existence of state water laws does not prohibit EPA from establishing limitations which incidentally involve the consumptive use of water. The Agency understands, however, that Congress intended that EPA not unnecessarily interfere with those rights. It is noteworthy that EPA is preparing a report to Congress under section 102(d) of the CWA regarding measures to coordinate water quality and water quantity issues and policies. This report demonstrates the Agency's continued sensitivity to this issue and its efforts to accommodate both goals.

8. *Alternate Effluent Limitations—Water Bubble.* In the preamble of the proposed regulation, the Agency announced it was considering whether to adopt an alternate effluent limitations policy ("water bubble"). The Agency solicited comments on whether it should adopt such a policy and, if so, what conditions on the policy might be imposed.

Under the water bubble policy, dischargers with multiple outfalls may discharge greater amounts of pollutants from outfalls where treatment costs are high in exchange for an equivalent decrease in pollutants discharged from outfalls at the same plant where abatement is less expensive. Thus, the same reduction in pollutant loadings can be obtained at less cost.

In this regulation, the Agency has adopted a water bubble policy for the steel industry. The policy is reviewed in detail in Section XXVI of this preamble. Following are the Agency's responses to the most significant comments received concerning the proposed policy outlined in the preamble to the proposed regulation.

Several commenters stated that the bubble concept would be inconsistent and incompatible with the use of indicator pollutants. Specifically, commenters raised concern that under the bubble policy, dischargers would be allowed to discharge an increased amount of those pollutants for which specific limitations have not been established. The Agency shared this concern and examined the issue carefully in developing its final policy. The final policy contains conditions on the use of the water bubble. The Agency found that unless conditions were imposed upon the use of the policy

involving cokemaking, hot forming, and cold rolling operations, there was a probability that there would be a net increase in toxic pollutant discharges under the policy. The conditions established by the Agency are designed to ensure there will not be a net increase in the discharge of toxic pollutants.

Some commenters stated that most of the restrictions set out in the preamble to the proposed regulation were unnecessary and burdensome. With respect to EPA's proposed restriction against trading one pollutant for another, one commenter suggested that EPA develop a method to determine the water quality impact of different combinations of pollutants and allow cross-pollutant trades under the water bubble policy when the water quality impact of the discharges under the bubble policy would be the same as without its use. The Agency has decided not to adopt that approach for the following reasons. The administrative burden associated with implementing such a policy would be unreasonably high. EPA's water bubble policy for the steel industry is an alternative method of achieving a reduction of pollutants discharged that is, at a minimum, equivalent to the level of discharge achieved by traditional effluent limitations. The bubble policy proposed by these commenters would involve a water pollution control strategy altogether different from the strategy called for by the Clean Water Act. This strategy would replace the technology based strategy with an alternative, water quality based strategy. The Agency's intent in developing a water bubble policy is to allow dischargers to save money in meeting the technology based limitations imposed by the Clean Water Act; not to provide an alternative regulatory program.

Some commenters opposed the condition which requires that each outfall have a specific discharge limit because they believed that it would preclude opportunities to implement efficient control strategies. They suggested that the Agency adopt a bubble policy which allows effluent limitations to be established on a plantwide basis; the so-called, "floating bubble". Under the suggested "floating bubble", dischargers would be allowed to vary the mix of controls at the various outfalls within a plant on a daily, weekly, or monthly basis, as long as the plantwide limitation is not exceeded. The Agency has carefully evaluated the advantages and disadvantages of the "floating bubble" and has concluded that fixed limits on each outfall are necessary to ensure optimum operation

of treatment facilities; enforcement of permit limitations; and, to minimize the administrative burden of the water bubble. The floating bubble would make it difficult for permit authorities to determine compliance using normal sampling techniques. To confirm compliance with a floating bubble permit, the control authority would need simultaneous samples from each outfall for which limitations are established under the policy. Reporting requirements and inspection procedures would have to be significantly modified and would require significant additional resources.

EPA recognizes that in theory, the flexibility to vary the mix of treatment within a plant at different times could reduce the cost of compliance with this regulation. However, despite requests to do so, industry representatives have not provided any data in support of their contention that the floating bubble would allow steel industry dischargers to use control strategies that are not feasible under a policy requiring fixed limits on each outfall. EPA believes the major savings associated with the bubble policy will result from changes in fixed control costs. Dischargers can take advantage of these savings under the policy adopted by the Agency.

The Agency solicited comments on the resource and administrative burden that the bubble policy might place on permit authorities. Several commenters expressed concern that the policy would present an additional burden that permit authorities would be unable to bear. The Agency has tried to design the bubble policy to minimize its administrative burden. First, the Agency has specified that dischargers must initiate bubble proposals at their own expense. In addition, as discussed above, EPA has sought to minimize the resource burden by requiring that bubble permits have fixed enforceable limits on each outfall. Once these limitations are determined, the cost of reviewing inspection and self-monitoring reports will be comparable to the administrative costs associated with traditional permit practices.

Some commenters were opposed to the condition in the Agency's proposed policy which required all wastestreams to meet applicable BPT requirements because it would restrict the utility and cost saving potential of the bubble. EPA reconsidered this condition and has concluded that the requirement would significantly limit opportunities available to dischargers to implement efficient control strategies, particularly in the hot forming subcategory. The Agency originally considered including this requirement to provide an

additional measure of water quality protection. The Agency believes that the conditions imposed upon the adopted policy along with the requirements that permits issued under the policy achieve the same pollutant removal as traditional permits and that dischargers meet water quality standards, are adequate to protect water quality. Thus, EPA has decided to not include a condition that all outfalls at plants employing the policy comply with applicable BPT limitations.

In the preamble to the proposed regulation, EPA announced that it was considering restricting its consideration of applications for use of the policy during the normal permit issuance and reissuance process. The Agency still believes this approach is appropriate. In order to keep the administrative burden associated with this policy to a minimum, the Agency believes that application for use of the policy should be raised and considered during normal permit reissuance. Several commenters suggested that dischargers be allowed to submit proposals to modify existing permits to include a water bubble. The Agency has considered that suggestion and has decided to accept bubble applications at any time during the period of currently effective permits where a bubble was not specifically considered during permit issuance. This will permit those dischargers which did not have the opportunity to seek a permit based upon the bubble policy to do so as soon as possible without waiting for reissuance. However, it avoids the long term administrative burdens associated with allowing dischargers to apply for permits based on the bubble policy when they had an adequate opportunity when the permit was last reissued.

One commenter interpreted the proposed bubble policy as excluding new source permittees from eligibility and suggested that such a limitation was inappropriate. This interpretation is correct as the Agency does not believe that it would be appropriate to permit a new source to install less stringent treatment than is required by NSPS because of the bubble policy. Under the Clean Water Act new sources are to achieve the "Best Demonstrated Technology" and therefore, the bubble policy should not be used to permit the discharger to install less stringent treatment.

One commenter stated that it would be inappropriate to address the bubble in the effluent limitation guidelines and suggested instead that all issues relating to a water bubble policy be resolved during the permit issuance process. EPA

believes that this regulation is an appropriate vehicle for implementing the water bubble policy. The Agency recognizes that circumstances affecting the use of the bubble will vary from plant to plant. However, the Agency believes that the bubble policy contained in this regulation allows adequate flexibility to address such circumstances.

The final water bubble policy as it pertains to the steel industry is outlined below and presented in the regulation (§ 420.03).

Under the water bubble policy, a discharger could discharge no more total pounds of pollutants than it could without the bubble. However, with the policy, the discharger would have the flexibility to allocate the discharge among its outfalls in the least costly manner. Properly applied, this policy should promote greater economic efficiency and increased innovation by providing plant managers with an economic incentive to develop new control strategies.

EPA recommends that permitting authorities (1) inform sources that the bubble approach is available, (2) explain the advantages and conditions of the use of the bubble, and (3) be receptive to proposals from sources that want to use a more cost-effective mix of controls.

To ensure that permits using the water bubble policy are equivalent to traditional permits in enforceability and environmental impact, EPA has imposed the following conditions on the use of the policy:

1. *Under the alternate limitations, no more pounds of pollutants can be discharged from a single plant than would be discharged under the traditional process specific limitations.* To satisfy this general condition, permits issued for facilities under the bubble policy must meet the following specific conditions:

a. Trades must not result in an increase in the discharge of pollutants over that allowed by the generally applicable limitations.

b. Trades must involve the same pollutant. EPA will allow dischargers to trade a pollutant in one wastewater only against the same pollutant in another wastewater. For example, zinc can be traded for zinc but not for chromium or lead.

c. Trades involving certain subcategory waste streams will be limited.

EPA has identified certain process subcategories with wastewaters that are significantly different than those from other steel industry subcategories. Unrestricted trades with these subcategories could result in a net

increase in toxic pollutants discharged. To ensure that permits issued under the bubble policy do not result in an increase in pollutants discharged, the Agency has imposed the following subcategory limitations:

(i) *Cokemaking.* Permits issued under the bubble policy which involve trades with cokemaking wastewaters will not be allowed. The Agency believes that the number and amounts of toxic organic pollutants found in cokemaking wastewaters cannot be effectively controlled under the bubble policy.

(ii) *Cold Forming.* Permits issued under the bubble policy which involve trades with cold forming wastewaters will not be allowed. The Agency believes that the variability and amounts of toxic organic pollutants associated with cold forming wastewaters are such that it is not possible to ensure effective control of toxic organic pollutants under the water bubble policy.

2. *Dischargers must meet water quality standards.* A change in the distribution of pollutant loadings may adversely affect water quality even if total loadings discharged do not increase. Permit authorities may not approve a bubble application if it would result in a violation of water quality standards.

3. *Each outfall must have a specific discharge limit.* Water bubble permits may not allow limitations to be set on a plant-wide "floating" basis. For the reasons discussed in Section XVI of this preamble, the Agency has decided not to allow the policy to be applied on a "floating" basis.

In the preamble to the proposed regulation, the Agency announced that it was considering imposing a condition on the policy which would require all wastewaters to meet applicable BPT limitations. EPA has decided not to include this requirement in the bubble policy for the steel industry. Such a requirement could significantly restrict the savings associated with the water bubble and is not necessary to achieve levels of removal equivalent to traditional permits, protect water quality, or ensure enforceability. Permits issued under this policy may allow certain wastewaters to exceed applicable BPT limitations if sufficient reductions can be achieved at other outfalls and the other conditions for bubble permits set out in this regulation are met.

Implementing the Water Bubble

It is the permittee's responsibility to initiate proposals for implementing the water bubble policy for its facilities. Permitting authorities will continue to

develop effluent limitations using the traditional approach of setting technology and water quality based limits on each discharge pipe. During the permit issuance process, the discharger may propose a different set of effluent limitations for its outfalls using the bubble concept. The permittee must demonstrate, to the satisfaction of the permit issuing authority, that its proposal results in a total discharge equivalent to the level required by the technology and water quality based limitations. When the discharger makes such a demonstration to the satisfaction of the permit issuing authority, its NPDES permit may be based upon the alternative discharge limitations.

EPA will accept proposals to modify existing NPDES permits based upon this policy at any time during the life of a permit for which a bubble proposal was not considered at the time of permit issuance. In no case however, may a water bubble proposal delay compliance with pollution control requirements. When a discharger presents a bubble proposal which appears to be capable of achieving the same total removal as required by the existing permit limitation and attaining the goals of the current compliance schedule, the permit authority will review the proposal to verify the equivalency of the alternative limitations. Dischargers will be required to meet their existing schedules until the permit authority approves the bubble permit.

Eligibility

In the preamble to the proposed regulation, the Agency announced that it was considering restricting non-complying dischargers from using the bubble policy. The Agency has decided to allow non-complying dischargers to propose the use of the bubble policy at its facilities with conditions under which they could come into compliance. The Agency believes that the flexibility to develop compliance strategies that use the bubble concept will result in faster compliance with effluent limitations and achieve the same total overall treatment of effluent.

9. *Limitations for Toxic Metals.* Some commenters suggested that the limitations for toxic metals should be established for dissolved or soluble metals rather than for total metals and that published hydroxide solubility data for each metal should be used as the basis for the limitations.

The Agency considered establishing limitations for toxic metals on the basis of dissolved or soluble metals in lieu of total toxic metals. However, the Agency has decided not to do so. The limitation

of total metals will control dissolved and soluble metals as well as all metal compounds. In addition, the Settlement Agreement and the Clean Water Act direct the Agency to establish limitations for specific toxic metals and all associated metal compounds. Limitations of total metals is consistent with the Settlement Agreement and the Clean Water Act. Moreover, because the toxic metals limited in this regulation serve as indicators for other toxic metal pollutants not specifically limited, the limitation of a metal as "total metal" serves better as an indicator than would a limitation of "dissolved" metals.

The total toxic metals limitations in this regulation are based upon actual performance of the model treatment technologies on steel industry wastewaters rather than on published hydroxide solubility data. The hydroxide solubility data are usually based upon single compound systems and do not take into account co-precipitation effects of excess iron found in many steel industry wastewaters. The Agency believes actual performance data are preferable to theoretical values for establishing effluent limitations.

10. Monitoring Recommendations. Several commenters stated that NPDES monitoring requirements are best determined by permit issuers and that the regulation should not contain any monitoring requirements.

The proposed regulation and this regulation do not contain any monitoring requirements. However, the preamble to the proposed regulation contained a recommended monitoring program which was used to estimate industry wide monitoring costs. As noted in the preamble to the proposed regulation, permit writers are not bound by the recommended program and may require more or less frequent monitoring as they consider appropriate.

11. Analytical Precision and Accuracy. All of the comments on analytical precision and accuracy pertain to analyses of toxic organic pollutants. The industry commented that the Agency's analytical methods used in the initial industry screening sampling surveys and in some follow-up surveys could lead to "false positive" identification of toxic organic pollutants and that the precision and accuracy of these analyses are poor. The industry also commented that the follow-up analyses for cokemaking and cold rolling wastewaters using the verification analysis protocols could still produce "false positive" identifications and that it is difficult to resolve by packed-column gas chromatography certain isomeric polynuclear aromatic hydrocarbons which can co-elute.

The initial industry screening survey data for toxic organic pollutants obtained by the Agency were not used as the basis for any effluent limitations and standards. This regulation contains limitations for four toxic organic pollutants (cokemaking-benzene, benzo-a-pyrene, naphthalene; cold rolling—naphthalene, tetrachloroethylene). In the cokemaking subcategory, these pollutants are used as indicators of other toxic organic pollutants. In both of these subcategories, extensive additional sampling and analysis was performed. All of the supplemental data used to develop limitations for the toxic organic pollutants listed above were obtained with GC/MS "verification" analyses which are completed with strict adherence to detailed quality control procedures including, for example, analyses of spiked samples, and duplicate samples. These procedures are designed to ensure that "false positive" identifications do not occur. Of the pollutants limited in this regulation, there is no co-elution problem for benzene and tetrachloroethylene. For benzo-a-pyrene and naphthalene, there may be co-elution with very similar compounds but not with other designated toxic organic pollutants. These other compounds that may co-elute with benzo-a-pyrene and naphthalene will consistently co-elute with the same gas chromatography columns. Since the Agency recommends a particular column in its analytical protocols and its contractors adhered to the protocols, any co-eluters with benzo-a-pyrene and naphthalene were taken into account in the analyses used as the basis for the limitations. Thus, if industry laboratories follow the Agency's protocol, the results obtained for determining compliance with the regulation should be consistent with the Agency's results. Furthermore, the analytical methodology indicates that other gas chromatography columns which can differentiate between co-eluters may also be used. Thus, the Agency does not consider co-elution of these compounds to be a problem with respect to monitoring for compliance with the regulation.

For those toxic organic pollutants limited in this regulation, the Agency has determined that the data underlying the limitations are sound.

XVII. Summary of Changes From Proposed Regulation

Following is a summary of changes that the Agency made to the proposed regulation in developing the final regulation. Because of the significant number of changes, the supporting rationale and documentation for every

change is not presented here. The Agency has prepared a separate document presenting its detailed response to all significant technical comments on the proposed regulation. (See Section XVI).

1. Industry Subcategorization. The Agency has not changed the major subcategorization of the industry outlined above for this final rule. However, it changed certain subdivisions within the following subcategories to provide for more representative model treatment system flow rates and, thus, more appropriate effluent limitations and standards:

- Cokemaking.
- Steelmaking.
- Salt Bath Descaling.
- Acid Pickling.
- Cold Rolling.
- Alkaline Cleaning.

Full discussions of these changes and the impacts on the final limitations and standards are presented in Section XVI and in the respective subcategory reports of the Development Document.

2. General. a. BCT. Because of the remand of the Agency's BCT methodology by the Fourth Circuit, the Agency has reserved its decision on the limitations for each steel industry subcategory where BAT limitations more stringent than the respective BPT limitations are promulgated. For the remaining subcategories, the applicable BCT limitations for conventional pollutants are identical to the subcategory-specific BPT limitations included in this regulation.

b. BAT. Upon review of additional data submitted during the comment period and, as noted earlier, acquired through sampling conducted since proposal of this regulation, the Agency has promulgated BAT limitations no more stringent than BPT limitations for the following subcategories:

- Steelmaking (semi-wet).
- Hot Forming.
- Salt Bath Descaling.
- Acid Pickling.
- Cold Rolling.
- Alkaline Cleaning.
- Hot Coating (without fume scrubbers).

The underlying BPT model treatment technologies are essentially the same for this regulation as in prior regulations. Because the BAT model treatment technologies are the same as the BPT technologies for the Salt Bath Descaling, Acid Pickling, Cold Rolling, and Hot Coating subcategories, the same toxic pollutant limitations are included at both BPT and BAT.

As discussed in greater detail in the Development Document, the Agency is not promulgating BAT limitations more

stringent than BPT at this time for those subcategories for the following reasons. The Agency found that toxic metal pollutants present in wastewaters from Hot Forming and Salt Bath Descaling operations are adequately controlled at the BPT levels. For Acid Pickling and Hot Coating operations, the Agency concluded that cascade rinsing cannot be readily retrofitted at all facilities because of space limitations which would require major reconstruction at some lines; and, because of the high industry-wide costs to retrofit cascade rinse systems on all existing sources.

For Cold Rolling operations, the Agency found that the BPT model treatment technology effectively controls certain toxic organic pollutants. However, due to the diversity of toxic organic pollutants found in these wastewaters, the Agency could not establish nationwide limitations for each pollutant. Limitations for these pollutants must be established on a case-by-case basis.

With respect to the Steelmaking (semi-wet) and Alkaline Cleaning subcategories, the Agency had not previously proposed BAT limitations. In promulgating BAT limitations no more stringent than BPT limitations for these subcategories, the Agency believes that toxic pollutants which are present in wastewaters for these subcategories are directly limited, controlled through the use of indicator pollutants, or the toxic pollutants are generally not present in BPT effluents.

c. *Limitations for Toxic Metals.* To promote central treatment of compatible wastewaters, the Agency proposed BAT limitations for chromium, lead, and zinc for most subcategories and copper and nickel for certain specialty steel subcategories. The final regulation has been revised to make central treatment more feasible at both the BPT and BAT levels of treatment. Lead and zinc are limited at the BPT or BAT level in most subcategories and chromium and nickel for specialty steel operations.

3. *Subcategory Specific Changes.* a. *Cokemaking.* (1) *Merchant Coke Plants.* Separate BPT, BAT, PSES, NSPS, and PSNS limitations and standards are included for merchant coke producers. These limitations and standards are based upon the same model treatment technology for coke plants which are captive to iron and steel production, but with slightly higher flow rates found to be typical of merchant coke plants.

(2) *Limitations and Standards.* The final BPT limitations for ammonia-N, total cyanide, and phenols (4AAP) are the same as those set out in the proposed regulation. The BPT limitations for suspended solids have

been relaxed. Limitations for total cyanide and phenols (4AAP) were relaxed slightly at the BAT, NSPS, and PSNS levels based upon additional data submitted during the comment period. The BAT phenols (4AAP) limitation for physical-chemical coke plants was also relaxed slightly based upon additional data submitted during the comment period. The Agency significantly relaxed PSES based upon the removal of pollutants in coke plant wastewaters demonstrated in some POTWs. However, NPDES and local authorities should also insure that coke plant pollutants discharged at the PSES level of treatment do not interfere with their individual POTW operations or pass through POTWs.

b. *Sintering.* The model treatment system flow was increased to a demonstrated level of 120 gallons/ton for all levels of treatment. Upon reexamination, the Agency believes that the industry-supplied data originally used by the Agency to develop the lower model BPT and BAT flow rates is not reliable. The BAT limitations for toxic metals are based upon filtration of the BPT recycle system blowdown. BAT limitations, NSPS, PSES, and PSNS for ammonia-N, total cyanide, and phenols (4AAP) are provided for those dischargers which co-treat sintering and ironmaking wastewaters. These limitations and standards are based upon the demonstrated performance on a full scale basis of the selected technology for ironmaking wastewaters.

c. *Ironmaking.* The final BPT limitations are the same as the proposed BPT limitations. The Agency relaxed the ammonia-N limitations for BAT, PSES, NSPS, and PSNS to levels demonstrated at a full scale treatment system. The Agency relied upon data from a pilot scale treatment system in developing the proposed BAT limitations. In addition the 30 day average ammonia-N limitations and standards are based upon a concentration of 10.0 mg/l as compared with a concentration of 1.0 mg/l which was used to develop the proposed limitations and standards.

d. *Steelmaking.* The Agency used a model flow of 110 gallons/ton for the Basic Oxygen Furnace—Open Combustion and Electric Furnace—Wet subdivisions for all treatment levels. The model flow rates used to develop the proposed limitations were 65 gallons/ton and 50 gallons/ton, respectively. The Agency has eliminated the Open Hearth Furnace—Semi-wet subdivision because there are no Open Hearth Furnaces with semi-wet air pollution controls.

e., f. *Vacuum Degassing, Continuous Casting.* Limitations and standards for chromium have been deleted to

facilitate co-treatment. The limitations and standards for lead and zinc have been relaxed to reflect the Agency's selection of lime precipitation and sedimentation as the model BAT, NSPS, PSES, and PSNS treatment technology. Filtration was the model treatment technology used to develop the proposed limitations and standards. The limitations and standards for vacuum degassing and continuous casting operations are now consistent with those for wet steelmaking operations, thus, making co-treatment of these wastewaters feasible.

g. *Hot Forming.* The Agency is promulgating only BPT, BCT, and NSPS for the Hot Forming subcategory. The BPT and BCT limitations are based upon the same model treatment systems used for the proposed BPT limitations and actual performance data for those systems. NSPS for total suspended solids and oil and grease are the same as those proposed.

h. *Salt Bath Descaling.* The terms "kolene" and "hydride" have been replaced with the terms "salt bath descaling-oxidizing", and "salt bath descaling-reducing", respectively. The Agency reevaluated the appropriateness of the subdivisions of each steel finishing subcategory and the proposed limitations and standards and has made changes in the final regulation. For salt bath descaling-oxidizing, EPA found that separate limitations and standards are appropriate for the following operations to allow for variations in rinse flow requirements: batch sheet and plate, batch rod and wire; batch pipe and tube; and, all continuous operations. Separate limitations are also provided for batch and continuous salt bath descaling-reducing operations. In both cases, revised BPT limitations and BAT limitations no more stringent than the BPT limitations have been promulgated based upon data supplied during the comment period. Limitations for chromium and nickel are now consistent with those for combination acid pickling to facilitate central treatment.

i. *Acid Pickling.* The Agency has made several changes in the limitations and standards for the acid pickling subcategory. EPA revised the subdivisions within each of the acid pickling operations (sulfuric, hydrochloric, and combination) and established separate limitations and standards by product type (i.e., rod, wire, coil; bar, billet, bloom; pipe, tube, other; and strip, sheet, plate). These revisions better reflect process rinsewater requirements for each group of products. A separate daily mass limitation based upon recycle of fume

scrubber water is provided for those acid pickling operations with fume scrubbers. Revised BPT limitations and BAT limitations no more stringent than the BPT limitations, including limits for toxic metals, have been promulgated. The model treatment system for the BPT limitations is the same as that used to develop the proposed limitations and standards. Cascade rinsing or other rinsewater flow reduction systems are included only in the NSPS and PSNS model treatment systems. Limitations for chromium and nickel for combination acid pickling operations are consistent with those for Salt Bath Descaling operations to facilitate central treatment. Sulfuric acid recovery systems are no longer part of the model treatment system, and thus, zero discharge is not required for any sulfuric acid pickling operations.

j. *Cold Forming*. For cold rolling operations, the Agency has promulgated revised BPT limitations and BAT limitations which are no more stringent than the BPT limitations, including limitations for toxic pollutants. The model treatment system is the same as the proposed BPT model treatment system. The Agency promulgated separate NSPS and PSNS for recirculation, combination, and direct application mills, as opposed to the generally applicable proposed NSPS and PSNS which were based only on recirculation mills. This could have restricted all new source cold rolling mills to recirculating systems on all rolling stands. There are no changes in the limitations and standards for cold worked pipe and tube operations.

k. *Alkaline Cleaning*. The promulgated BPT limitations for alkaline cleaning are based upon higher model treatment system flow rates for both batch and continuous operations. NSPS are based upon a model treatment system including filtration of a lower volume of process wastewater than included in the BPT model treatment system.

l. *Hot Coating*. The final limitations and standards now include a daily mass limitations allowance for fume scrubbers at BPT. There is a reduced allowance at BAT, PSES, NSPS, and PSNS based upon the recycle incorporated in those model treatment systems. Cascade rinsing or other rinsewater flow restrictions are included only in the NSPS and PSNS model treatment systems (see above comments on Acid Pickling). Limitations for toxic metals at all levels of treatment are designed to facilitate central treatment of steel finishing wastewaters.

XVIII. Regulated Pollutants

The basis for selecting the regulated pollutants, as well as the general nature and environmental effects of these pollutants, is discussed in detail in Section V of Volume I of the Development Document. Some of these pollutants are designated as toxic under Section 307(a) of the Act.

A. *BPT*. The pollutants controlled by this regulation include, for the most part, the same pollutants controlled by the prior BPT limitations. Some pollutants were deleted for various subcategories because studies undertaken subsequent to the promulgation of the previous regulations demonstrate that these pollutants are not found in significant quantities in wastewaters from those operations. In certain steel finishing subcategories where identical BPT and BAT limitations are promulgated, the Agency selected the pollutants for which limitations are promulgated to facilitate central or combined treatment of compatible wastewaters.

With few exceptions, the BPT effluent limitations are expressed in terms of maximum 30-day average and maximum daily mass effluent limitations in kilograms of pollutant per 1000 kilograms (lbs/1000 lbs) of product.

The limitations are calculated by multiplying the demonstrated pollutant concentrations, the BPT model discharge flow for each subcategory, and an appropriate conversion factor. For maximum daily limitations, the long term average concentration is multiplied by an appropriate variability factor, the BPT model discharge flow, and the conversion factor noted above. Because the Agency could not relate production data directly to water flow rates for fume scrubbers associated with acid pickling and hot coating operations, daily mass effluent limitations are expressed in kilograms per day for each fume scrubbing system.

B. *BCT*. The conventional pollutants total suspended solids and oil and grease as well as pH are limited under BCT, where BCT limitations are promulgated.

C. *BAT and NSPS*. 1. *Non-toxic, Non-conventional Pollutants*. The non-toxic, non-conventional pollutants for which BAT limitations and NSPS are promulgated are ammonia-N and phenols (4AAP). These pollutants are subject to numerical limitations expressed in kilograms per 1000 kilograms (lbs/1000 lbs) of product. The Agency also promulgated limitations for total residual chlorine for two categories where chlorine may be used in the treatment process.

2. *Toxic Pollutants*. Forty-nine toxic pollutants were found at concentrations above treatability levels in steel industry wastewaters (see Appendix B). Thirty toxic pollutants were found in cokemaking wastewaters. The Agency is promulgating effluent limitations in one or more subcategories for the following toxic pollutants: cyanide, benzene, naphthalene, benzo(a)pyrene, tetrachloroethylene, chromium, lead, nickel, and zinc. These pollutants are subject to numerical limitations expressed in kilograms per 1000 kilograms (lbs/1000 lbs) of product. The remaining toxic pollutants found in steel industry wastewaters, which are not specifically limited in this regulation, will be controlled by limitations for "indicator" pollutants as discussed below. As noted above, for acid pickling and hot coating operations with fume scrubbers, mass limitations are expressed in kilograms per day for each scrubbing system.

3. *Indicator Pollutants*. The difficulty and cost of analyses for the many toxic pollutants found in steel industry wastewaters has prompted EPA to develop an alternative method of regulating certain toxic pollutants. Instead of promulgating specific effluent limitations for each of the forty-nine toxic pollutants found in the industry's wastewaters above treatability levels, the Agency is promulgating effluent limitations for certain "indicator" pollutants. These include chromium, lead, nickel, zinc, phenols (4AAP) and four toxic organic pollutants. The data available to EPA generally show that control of the selected "indicator" pollutants will result in comparable control of other toxic pollutants found in the wastewaters but not specifically limited. By establishing specific limitations and standards for only the "indicator" pollutants, the Agency will reduce the difficulty, high cost, and delays of pollutant monitoring and analyses that would result if pollutant limitations were established for each toxic pollutant. EPA estimates that industry will save about \$5 million annually in monitoring and analysis costs with this approach as opposed to monitoring for all pollutants. Section V of Volume I of the Development Document discusses in detail the pollutants found in steel industry wastewaters and those for which the Agency is promulgating limitations and standards at the BAT and NSPS levels of treatment. Section X of each subcategory report discusses the bases for the selection of "indicator" pollutants.

D. PSES and PSNS. Except for PSES for cokemaking operations, the Agency is promulgating PSES and PSNS for the same toxic pollutants which are limited at BAT and NSPS. The Agency is promulgating those standards to insure against POTW upsets, to prevent contamination of POTW sludges and to guard against pass-through of toxic pollutants. The PSES and PSNS are expressed as maximum 30-day average and maximum daily mass limitations in kilograms per 1000 kilograms (lbs/1000 lbs) of product, except for acid pickling and hot coating operations with fume scrubbers where mass limitations are expressed in kilograms per day for each fume scrubber. As a general rule, the Agency establishes pretreatment standards on the basis of concentration. However, for the steel industry, the Agency believes the standards should be based upon mass limitations (kg/kkg) to insure that effective toxic pollutant control is provided and to minimize the hydraulic impact of large volume steel industry discharges on POTWs.

XIX. Pollutants and Subcategories not Regulated

The Settlement Agreement contained provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected and therefore, excluded from regulation are listed in Appendix B to this regulation.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent in only trace quantities and not likely to cause toxic effects. Appendix B lists the toxic pollutants which were detected in the effluent in trace amounts (at or below the nominal limit of analytical quantification), which are not likely to cause toxic effects and which are excluded from this regulation.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants detected in the effluent from a small number of sources and uniquely related to those sources. Appendix B contains a column labeled "Unique Occurrence" which

lists those pollutants detected in the effluents of only one plant and uniquely related to that plant, which have been excluded from the proposed regulation. Appendix C contains the list of pollutants, by subcategory, for which limitations are promulgated.

XX. Monitoring Recommendations

When required to carry out the objectives of the Act, EPA is authorized by Section 308 to require the owner or operator of a pollutant discharge source to establish and maintain records; make reports; install and use monitoring equipment or methods; sample effluents; and, provide such other information as the Administrator may reasonably require. The authority under section 308 has been frequently used by permit issuers to set monitoring requirements to "determine whether any person is in violation" of the requirements of a permit or other requirement of the Act (section 308(a)(2)). Additionally, EPA has frequently sought information under section 308 to aid in developing regulations for many industries.

In this and other regulations involving toxic pollutants, EPA has developed typical monitoring programs for direct and indirect dischargers for the purpose of estimating monitoring costs as part of the economic impact analysis of the regulation. These monitoring programs are not intended to supercede or duplicate existing compliance monitoring requirements set by NPDES permit authorities, but may be used as a guide in establishing minimum NPDES monitoring requirements. A minimum monitoring and analysis program is feasible at this time because only a small number of toxic pollutants are limited, the cost of toxic pollutant analyses has decreased, and laboratory availability and efficiency have dramatically increased since the initiation of this study.

The monitoring and analysis program considered by the Agency includes continuous flow monitoring, grab sampling for pH (3 grabs per day, once a week), and oil and grease (3 grabs/day, once a week), and the collection of 24-hour composite samples once per week for all limited pollutants except as noted below. More intensive monitoring is suggested for the period of time necessary to determine compliance with the final limitations and to acquire sufficient data to determine a correlation between the indicator pollutants and other toxic pollutants present in the wastewater. Accordingly, as of July 1, 1984, (the required compliance date for BAT), or as of the date of attainment of operational level of treatment facilities if such facilities

are completed prior to July 1, 1984, monitoring and analysis of the limited pollutants should be carried out on a schedule of five daily composite samples per week (once per week for GC/MS pollutants). Complete analyses should also be concurrently performed for all toxic metal and toxic organic pollutants present in wastewaters where toxic metals and organic compounds are specifically limited. When the appropriate regulatory authority determines that compliance has been demonstrated and sufficient data has been acquired to determine a correlation between the indicator and other toxic pollutants, monitoring can then be undertaken in accordance with the long term schedule discussed above. It should be noted that EPA may, on a case-by-case basis request collection of additional samples of raw wastewater or wastewater at points of intermediate treatment to determine treatment efficiencies.

XXI. Costs and Economic Impacts

The Agency estimated the costs and economic impacts of this regulation using two scenarios for the future demand for domestically produced steel products. In the first scenario, which is based on rapid growth in shipments reaching 116 million tons by 1990, the Agency estimates that this regulation will require the industry to invest about \$310 million (in constant 1980 dollars) by 1984 for existing sources and about \$420 by 1990 for new sources. This represents about a 12 percent increase in the industry's current investment in water pollution control facilities for existing sources. The new investment is also less than 2 percent of the capital expenditures projected for the industry in the 1980-1990 period. In the second scenario, which is based upon less expansionary demand for steel products, the Agency estimates that this regulation will require the industry to invest the same \$310 million by 1984, and about \$270 million by 1990 for new sources. These capital requirements and the annual costs of water pollution control equipment required by the regulation are summarized in Tables 1 and 2. The associated annualized incremental costs for the regulation (including interest, depreciation, operating, and maintenance) in Scenario 1 will be about \$72.6 million in 1984, increasing to \$127.1 million in 1990. The incremental effect of these costs on steel prices is estimated to be an increase of about 0.6 percent in the baseline price of a ton of steel. In Scenario 2, the annualized incremental costs for the regulation will be about \$76.5 million in

1984, and increase to \$99.0 million in 1990. By the early 1990's, the price per ton of steel will increase incrementally by about 0.6 percent under this scenario.

BPT EPA estimates that the steel industry must invest an additional \$213.2 million (in constant 1980 dollars) by 1984 to comply with the final BPT limitations. In Scenario 1, those guidelines will require incremental annualized costs (including interest, depreciation, operating and maintenance) of \$27.0 million in 1984, increasing to \$29.4 million in 1990. By 1990, total BPT investments of \$1,984.8 million will result in total annual costs of \$313.2 million. Total annualized costs under the second scenario will be \$298.1 million in 1990.

BAT EPA estimates that the steel industry must invest an additional \$70.1 million by 1984 to comply with the final BAT limitations. In Scenario 1, the incremental annual costs necessary to achieve the BAT limitations are about \$15.8 million in 1984 and \$16.3 million in 1990. Total annual costs will be \$21.9 million in 1990. In Scenario 2, incremental annual costs are about \$15.5 million in 1984, and \$15.9 million in 1990. Total annual costs under this scenario will be \$21.2 million.

PSES Compliance with the final PSES is projected to require the industry to invest an additional \$26.3 million by 1984. In Scenario 1, the incremental annual costs necessary to achieve these standards are about \$4.9 million in 1984 and \$5.2 million in 1990. By 1990 total PSES investments of \$143.1 million will result in total annual costs of \$23.8 million. In Scenario 2, total annual costs will be slightly lower than in the first scenario and will equal \$22.9 million in 1990.

NSPS. To meet the final NSPS in the first scenario, the industry must invest an estimated \$420.5 million by 1990. The annual costs necessary to achieve these standards are about \$24.9 million in 1984 and \$26.5 million in 1990. In the second scenario, capital expenditures will amount to \$273.2 million by 1990 and annual costs will be \$27.4 million in 1984 and \$31.0 million in 1990.

TABLE 1.—STEEL INDUSTRY EFFLUENT REGULATION COSTS SCENARIO 1

(Million of 1980 dollars)

	Capital Costs ¹		
	Facilities in-place ²	Facilities re-quired	Total
BPT.....	\$1,771.6	\$213.2	\$1,984.8
BAT.....	26.4	70.1	96.5
PSES.....	116.8	26.3	143.1
Total.....	1,914.8	309.6	2,224.4

TABLE 1.—STEEL INDUSTRY EFFLUENT REGULATION COSTS SCENARIO 1—Continued

(Million of 1980 dollars)

	Capital Costs ¹		
	Facilities in-place ²	Facilities re-quired	Total
NSPS.....	0	420.5	420.5
PSNS.....	NA	NA	NA

NA=Not applicable. All new sources are assumed to be direct dischargers.

¹ Does not include the costs of water pollution controls installed by the industry but not required by the final regulations.

² Facilities in-place as of June 30, 1981.

	Annual Costs			
	Incremental		Total	
	1984	1990	1984	1990
BPT.....	\$27.0	\$29.4	\$297.3	\$313.2
BAT.....	15.8	16.3	21.2	21.9
PSES.....	4.9	5.2	22.4	23.8
Total.....	47.7	50.9	340.9	358.9
NSPS.....	24.9	26.5	24.9	26.5
PSNS.....	NA	NA	NA	NA

NA=Not applicable. All new sources are assumed to be direct dischargers.

TABLE 2.—STEEL INDUSTRY EFFLUENT REGULATION COSTS SCENARIO 2

(Million of 1980 dollars)

	Capital Costs ¹		
	Facilities in-place ²	Facilities re-quired	Total
BPT.....	\$1,771.6	\$213.2	\$1,984.8
BAT.....	26.5	70.1	96.6
PSES.....	116.8	26.3	143.1
Total.....	1,914.8	309.6	2,224.4
NSPS.....	0	273.2	273.2
PSNS.....	NA	NA	NA

NA=Not applicable. All new sources are assumed to be direct dischargers.

¹ Does not include the costs of water pollution controls installed by the industry but not required by the final regulations.

² Facilities in-place as of June 30, 1981.

	Annual Costs			
	Incremental		Total	
	1984	1990	1984	1990
BPT.....	\$28.7	\$27.2	\$305.4	\$298.1
BAT.....	15.5	15.9	20.7	21.2
PSES.....	4.9	4.9	22.7	22.9
Total.....	49.1	48.0	348.8	342.2
NSPS.....	27.4	31.0	27.4	31.0
PSNS.....	NA	NA	NA	NA

NA=Not applicable. All new sources are assumed to be direct dischargers.

The above capital costs for "facilities required" are different than those presented in the Development Document. The cost differences are largely due to differences in modeling of the industry and the fact that Development Document costs are in 1978 nominal dollars and the above

costs are in 1980 real dollars. These differences are fully explained in the economic impact report described below. The aggregate differences in these costs are not significant in terms of the results of the economic impact analysis and were, in fact, accounted for in a sensitivity analysis.

To account for the uncertainties facing the steel industry over the next decade, the Agency evaluated the economic impact of this regulation using the two scenarios described previously regarding the future demand for domestically produced steel products. Both scenarios are based upon the assumption that current government policies toward the industry will continue throughout the 1980s. The policies include: The Economic Recovery Tax Act of 1981 concerning corporate income tax rates, depreciation schedules, and investment tax credits; the relaxation of formal and informal steel price controls; and, effective enforcement of steel trade law including the trigger price mechanism.

As summarized in Table 3-5, the economic impact of this regulation is relatively small under either scenario. The incremental costs associated with the regulation result in incremental short-run changes in price, market share, employment and production of about 0.6 percent or less from their respective baseline levels, and about 0.6 percent for production. Except for a small price increase of about 0.6 percent in the early 1990's there are virtually no long run impacts on production, market share, or employment under either scenario.

The reduced economic impact associated with the recommended regulation compared to that of the proposed regulation is a result of the following: (1) Lower cost of this regulation; (2) a more favorable projected economic climate for the industry; and (3) a decrease in the Agency's estimate of the impact on capacity due to foregone industry modernization and reworks associated with water pollution control costs.

The economic impact analysis contains sensitivity analyses which account for effects of higher inflation rates and higher water pollution control costs than those contained in both scenarios; the stretchout of air pollution control costs; and whether profits will be increased or the price of the product will be reduced due to certain cost savings. These results are also summarized in Table 6. The projected economic impacts of the regulation do not differ significantly under the sensitivity analyses from the results described above except where the

estimates of water pollution control costs were doubled. In this case, the 1985 impacts increased from about 0.6 percent or less to about 1.2 percent or less. These impacts are also projected to disappear by 1990, except for a price increase of 0.9 percent. Thus the impact of the regulation remained minor even with doubling of water pollution control costs.

In addition to the industry-wide economic impact analysis, the Agency analyzed the impact of increased costs associated with this regulation upon potential plant closures. The Agency analyzed models of the twelve steel plants which were expected to be most seriously affected by additional water pollution control costs. For each model plant analyzed, the incremental increases in total production costs associated with compliance with the BPT and BAT limitations are less than one percent. On that basis, the Agency concluded that increases in operating costs associated with this regulation are unlikely to result in the closure of any of the model plants or processes within those plants.

In summary, the Agency concludes that the economic impacts of the additional water pollution control costs likely to be incurred as a result of this regulation are not significant.

TABLE 3.—SHORT-RUN ECONOMIC IMPACT OF FINAL WATER POLLUTION CONTROL REGULATIONS, 1984

	Price (1980 dollars per ton)	Domestic shipments (millions of tons)	Market share (percent)	Employment (thousands of employees)
Industry Status in 1980 ¹	1496.84	83.90	83.70	399.00
Scenario 1:				
Baseline	519.33	100.71	80.28	441.66
Added Water Costs	520.11	100.10	79.80	439.48
Scenario 2:				
Baseline	519.45	102.71	83.53	462.54
Added Water Costs	520.18	102.06	83.01	460.15

¹Price as of December 30, 1980.

²Source: AISI Statistical Report 1980.

TABLE 4.—SHORT-RUN ECONOMIC IMPACT OF FINAL WATER POLLUTION CONTROL REGULATIONS, 1985

	Price (1980 dollars per ton)	Domestic shipments (millions of tons)	Market share (percent)	Employment (thousands of employees)
Industry Status in 1980 ¹	1496.84	83.90	83.70	399.00
Scenario 1:				
Baseline	533.86	98.77	77.28	425.78
Added Water Costs	535.18	98.15	76.80	423.60

TABLE 4.—SHORT-RUN ECONOMIC IMPACT OF FINAL WATER POLLUTION CONTROL REGULATIONS, 1985—Continued

	Price (1980 dollars per ton)	Domestic shipments (millions of tons)	Market share (percent)	Employment (thousands of employees)
Scenario 2:				
Baseline	533.21	101.21	82.87	448.67
Added Water Costs	534.52	100.54	82.32	446.20

¹Price of December 30, 1980.

²Source: AISI Statistical Report 1980

TABLE 5.—LONG-RUN ECONOMIC IMPACT OF FINAL WATER POLLUTION CONTROL REGULATIONS, 1990

	Price (1980 dollars per ton)	Domestic shipments (millions of tons)	Market share (percent)	Employment (thousands of employees)
Industry Status in 1980 ¹	1496.84	83.90	83.70	399.00
Scenario 1:				
Baseline	558.80	116.00	84.50	459.11
Added Water Costs	562.06	116.00	84.50	459.96
Scenario 2:				
Baseline	555.28	103.39	80.67	401.86
Added Water Costs	556.72	102.95	80.33	400.78

¹Prices as of December 30, 1980.

²Source: AISI Statistical Report 1980.

XXII. Non-Water Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA considered the effect of this regulation on air pollution, solid waste generation, water consumption, and energy consumption. This regulation was circulated to and reviewed by EPA personnel responsible for non-water quality programs. While it is difficult to balance pollution problems against each other and against energy use, EPA is promulgating a regulation which it believes best serves often competing national goals.

A detailed discussion of these impacts is contained in Section VIII of each subcategory report of the Development Document. Following is a summary of the non-water quality environmental impacts associated with this regulation:

A. *Air Pollution.* Industry compliance with the proposed BPT, BAT, NSPS, PSES, and PSNS limitations and

standards will not create any substantial air pollution problems. However, in several subcategories, slight air impacts can be expected. For example, minimal amounts of volatile organic compounds may be released to the atmosphere by aeration of cokemaking wastewaters in biological treatment; small emissions of air pollution may result if ironmaking wastewaters are used to quench the hot slag generated in the process; and, water vapor containing some particulate matter will be released from the cooling tower systems used in several of the subcategories. The Agency does not consider any of these impacts to be significant.

B. *Solid Waste.* The Agency has determined that about 20 million tons per year of solid waste (at 30% solids) have been and will be generated by the steel industry in complying with this regulation. Of this amount, almost all is currently generated by the steel industry in complying with current NPDES permit conditions. This solid waste is comprised almost entirely of treatment plant sludges. EPA recognizes that significant quantities of other solid wastes, such as steelmaking slag and blast furnace slag, are generated by the steel industry. However, those solid wastes are generated by the manufacturing processes and are not associated with this water pollution control regulation. For this reason, process solid wastes are not included in this impact analysis. The cost of disposing of these solid wastes were included as baseline costs in the economic impact analysis.

The data gathered for this study demonstrate that the industry collects and disposes of most sludges currently generated in existing treatment systems. Hence, the industry is presently incurring sludge disposal costs and finding the necessary disposal sites. The Agency believes that the industry will continue to be able to do so. (EPA is unable to accurately estimate the number of disposal sites that are secure, well maintained operations). The average sludge disposal cost used in this analysis is \$5.00 per ton for sludges not classified as hazardous under RCRA and \$18.00 per ton for hazardous wastes. These costs were included in the economic impact analysis. The Agency has determined that the solid waste impacts associated with this regulation are small.

C. *Consumptive Water Loss.* Water loss is a remand issue of the 1974 and 1976 regulations. As discussed in detail in Section III of Volume I of the Development Document, the Agency

concludes that the benefits derived from compliance with the limitations justify the negative impacts associated with the consumption of water. The Agency has reached this conclusion after considering this issue on both an industry-wide basis and on a water-scarce regional basis.

D. Energy Requirements. EPA estimates that compliance with this regulation will result in a net increase of electrical energy consumption at the BPT and BAT levels of treatment as shown below:

Treatment level	Net energy consumption (kw-hr) (billion)
BPT.....	1.24
BAT.....	0.08
PSES.....	0.09
Total.....	1.41

The electric power requirements associated with the limitations and standards for existing sources amount to 2.7 percent of the 52.3 billion kw-hrs of electrical energy consumed by the steel industry in 1980. This amounts to only 0.2 percent of the total energy (electrical and non-electric) consumed by the industry. The Agency concludes that the impacts of energy consumed from compliance with this regulation are justified by the benefits derived from compliance with the limitations and standards.

XXIII. Best Management Practices (BMPs)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMPs"). EPA intends to develop BMPs which are: (1) Applicable to all industrial sites; (2) applicable to a designated industrial category; and (3) provide guidance to permit authorities in establishing BMPs required by unique circumstances at a given plant.

EPA is not promulgating BMPs specific to the steel industry in this regulation.

XXIV. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent

guidelines is necessary because such upsets will inevitably occur in even properly operated control equipment. Because technology-based limitations are based upon what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle*, *supra* and *Corn Refiners Association, et al. v. Costle*, 594 F.2d 1223 (8th Cir. 1979). See also *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented. Bypass provisions covering emergency situations have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and they are included in the NPDES regulations, 40 CFR § 122.60, 45 FR 33298; May 19, 1980. The upset provisions establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Because this issue is resolved in the NPDES permit regulations, this regulation does not address these issues.

XXV. Variances and Modifications

Upon the promulgation of this regulation, the numerical effluent limitations for the appropriate subcategory must be included in all federal and state NPDES permits thereafter issued to steel industry direct dischargers. In addition, the pretreatment standards are directly applicable to indirect dischargers upon promulgation.

For the BPT limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle*, *supra*. This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in

EPA's 1974-1976 steel industry regulations, it is now included in the NPDES regulations and is not included in the steel or other industry regulations. See the final NPDES regulations, Act 45 FR 33290 (May 19, 1980), for the text and explanation of the "fundamentally different factors" variance.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for non-toxic and non-conventional pollutants are subject to modifications under sections 301(c) and 301(g) of the Act. According to section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 40 CFR Part 125 Part D. Under section 301(1) of the Act, these statutory modifications are not applicable to "toxic" pollutants. Likewise, limitations on nonconventional pollutants used as "indicators" for toxic pollutants are not subject to section 301(c) or section 301(g) modifications, unless the discharger demonstrates that a waste stream does not contain any of the toxic pollutants for which the "indicator" was designed to demonstrate removal.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTWs. See 40 CFR 403.7, 403.13; 43 FR 27736 (June 26, 1978). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *duPont v. Train*, *supra*.

XXVI. Relationship to NPDES Permits

1. Administrative Issues. The BPT, BAT, and NSPS limitations and standards in this regulation will be applied to individual steel plants through NPDES permits issued by EPA or approved state agencies under section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation of NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of this regulation and NPDES permits.

One matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations, guidelines and standards. Under

currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of this regulation and before June 30, 1981 must include a "reopener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. Permits issued after June 30, 1981 must meet the requirements of sections 301(b)(2) of the Clean Water Act whether or not applicable effluent limitation guidelines have been promulgated. See 40 CFR 122.62(c), 44 FR 33290, 33339 (May 19, 1980).

The promulgation of this regulation does not restrict the power of any permit-issuing authority to act in any manner not inconsistent with law or these or any other EPA regulations, guidelines or policy. For example, the fact that this regulation does not control a particular pollutant does not preclude the permit issuer from limiting such pollutant on a case-by-case basis when necessary to carry out the purposes of the Act. In addition, to the extent that state water quality standards or other provisions of state or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

2. Enforcement. An additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing this regulation. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources so as to maximize their availability for actions against those who fail to make good faith efforts to comply with the Act.

3. Application of Effluent Limitations. As noted in each subcategory report of the Development Document, all of the limitations and standards contained in this regulation were developed on a gross basis; that is, the performance of the model treatment systems was determined without subtracting contributions of regulated pollutants in intake waters. The Agency determined

that in no case it investigated did regulated pollutant levels found in the intake waters have an impact on the effluent quality from the model treatment systems. All of the limitations and standards contained in this regulation should be applied on a gross basis with no allowance for pollutants in the intake waters, except in those instances where allowances may be granted in accordance with the net/gross provisions of the consolidated NPDES permit regulations.

4. Alternate Effluent Limitations—Water Bubble. The Agency's responses to comments received on the proposed water bubble policy are presented in Section XVI. The final water bubble policy as it pertains to the steel industry is outlined in Section XVI and presented in the regulation, (Section 420.03).

XXVII. Executive Order 12291

Under Executive Order 12291, The Agency must determine whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is Major and requires a Regulatory Impact Analysis because the annual effect on the economy is more than \$100 million. The Regulatory Impact Analysis for this regulation can be obtained from Alec McBride, Monitoring and Data Support Division, WH-553, US EPA, 401 M Street, S.W., Washington, D.C. 20460.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

XXVIII. Regulatory Flexibility Analysis

Pub. L. 96-354 requires EPA to prepare an Initial regulatory Flexibility Analysis for all regulations that may have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. The economic impact analysis described above indicates that there will not be a significant impact on any segment of the regulated population, large or small. Therefore, the Agency

determined that a formal regulatory flexibility analysis is not required for this regulation.

XXIX. List of Subjects in 40 CFR Part 420

Iron, Steel, Water pollution control, Wastewater treatment and disposal.

Dated: May 18, 1982.

Ann M. Gorsuch,
Administrator.

Appendix A.—Abbreviations, Acronyms and Other Terms Used in This Notice

- Act—The Clean Water Act
Agency—The U.S. Environmental Protection Agency
BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act
BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.
BMP—Best management practices under Section 304(e) of the Act.
BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.
Clean Water Act—The Federal water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*) as amended by the Clean Water Act of 1977 (Pub. L. 95-217)
Direct Discharger—A facility which discharges or may discharge pollutants directly into waters of the United States
Indirect Discharger—A facility which introduces or may introduce pollutants into a publicly owned treatment works
NPDES Permit—A National Pollutant Discharge Elimination system permit issued under section 402 of the Act
NSPS—New source performance standards under Section 306 of the Act
POTW—Publicly owned treatment works
PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act
PSNS—Pretreatment standards for new sources of direct discharges under Section 307(b) and (c) of the Act
RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waste Disposal Act

Appendix B—Development of Regulated Pollutant List Iron & Steel Industry

No	Pollutant	Not deleted	Unique occurrence	Not treatable	Regulation Considered
001	Acenaphthene	-	-	-	X
002	Acrolein	X	-	-	-

Appendix B—Development of Regulated Pollutant List Iron & Steel Industry—Continued

No	Pollutant	Not deleted	Unique occurrence	Not treatable	Regulation Considered
003	Acrylonitrile	-	-	-	X
004	Benzene	-	-	-	X
005	Benzidine	X	-	-	-
006	Carbon Tetrachloride	-	-	-	X
007	Chlorobenzene	X	-	-	-
008	1,2,4-Trichlorobenzene	X	-	-	-
009	Hexachlorobenzene	-	-	-	X
010	1,2-Dichloroethane	-	-	X	-
011	1,1,1-Trichloroethane	-	-	-	X
012	Hexachloroethane	X	-	-	-
013	1,1-Dichloroethane	-	-	-	X
014	1,1,2-Trichloroethane	-	X	-	-
015	1,1,2,2-Tetrachloroethane	-	-	X	-
016	Chloroethane	X	-	-	-
017	Bis(chloromethyl)ether	X	-	-	-
018	Bis(2-chloroethyl)ether	X	-	-	-
019	2-Chloroethyl vinyl ether	X	-	-	-
020	2-Chloronaphthalene	-	-	X	-
021	2,4,6-Trichlorophenol	-	-	X	-
022	Parachlorometacresol	-	-	-	X
023	Chloroform	-	-	-	X
024	2-Chlorophenol	-	-	X	-
025	1,2-Dichlorobenzene	-	-	X	-
026	1,3-Dichlorobenzene	X	-	-	-
027	1,4-Dichlorobenzene	-	-	X	-
028	3,3'-Dichlorobenzidine	X	-	-	-
029	1,1-Dichloroethylene	-	X	-	-
030	1,2-Transdichloroethylene	-	-	X	-
031	2,4-Dichlorophenol	-	-	X	-
032	1,2-Dichloropropane	X	-	-	-
033	1,2-Dichloropropylene	X	-	-	-
034	2,4-Dimethylphenol	-	-	-	X
035	2,4-Dinitrotoluene	-	-	-	X
036	2,6-Dinitrotoluene	-	-	-	X
037	1,2-Diphenylhydrazine	-	-	X	-
038	Ethylbenzene	-	-	-	X
039	Fluoranthene	-	-	-	X
040	4-Chlorophenyl phenyl ether	X	-	-	-
041	4-Bromophenyl phenyl ether	X	-	-	-
042	Bis (2-chloroisopropyl)ether	X	-	-	-
043	Bis (2-chloroethoxy)methane	X	-	-	-
044	Methylene chloride	-	-	X	-
045	Methyl chloride	X	-	-	-
046	Methyl bromide	X	-	-	-
047	Bromoform	X	-	-	-
048	Dichlorobromomethane	-	-	X	-
049	Trichlorofluoromethane	X	-	-	-
050	Dichlorodifluoromethane	X	-	-	-
051	Chlorodibromomethane	X	-	-	-
052	Hexachlorobutadiene	X	-	-	-
053	Hexachlorocyclopentadiene	X	-	-	-
054	Isophorone	-	-	X	-
055	Naphthalene	-	-	-	X
056	nitrobenzene	-	-	X	-
057	2-Nitrophenol	-	-	X	-
058	4-Nitrophenol	-	-	-	X
059	2,4-Dinitrophenol	-	-	X	-
060	4,6-Dinitro-o-cresol	-	-	-	X
061	N-Nitrosodimethylamine	X	-	-	-
062	N-Nitrosodiphenylamine	X	-	-	-
063	N-Nitrosod-n-propylamine	X	-	-	-
064	Pentachlorophenol	-	-	-	X
065	Phenol	-	-	-	X
066	Bis(2-ethylhexyl)phthalate	-	-	-	X
067	Butyl benzyl phthalate	-	-	-	X
068	Di-n-butyl phthalate	-	-	-	X
069	Di-n-octyl phthalate	-	-	-	X
070	Diethyl phthalate	-	-	-	X
071	Dimethyl phthalate	-	-	-	X
072	Benzo(a)anthracene	-	-	-	X
073	Benzo(a)pyrene	-	-	-	X
074	3,4-Benzofluoranthene	-	X	-	-
075	Benzo(k)fluoranthene	-	X	-	-
076	Chrysene	-	-	-	X
077	Acenaphthylene	-	-	-	X
078	Anthracene	-	-	-	X
079	Benzo(ghi)perylene	-	X	-	-
080	Fluorene	-	-	-	X
081	Phenanthrene	-	-	-	X
082	Dibenzo(a,h)-anthracene	-	X	-	-
083	Indeno(1,2,3-cd)pyrene	-	X	-	-
084	Pyrene	-	-	-	X
085	Tetrachloroethylene	-	-	-	X
086	Toluene	-	-	-	X
087	Trichloroethylene	-	-	-	X
088	Vinyl Chloride	-	X	-	-
089	Aldrin	-	X	-	-
090	Dieldrin	-	X	-	-
091	Chlordane	-	X	-	-
092	4,4'-DDT	-	X	-	-
093	4,4'-DDE	-	X	-	-

Appendix B—Development of Regulated Pollutant List Iron & Steel Industry—Continued

No	Pollutant	Not deleted	Unique occurrence	Not treatable	Regulation Considered
094	4,4'-DDD	-	X	-	-
095	a-endosulfan-Alpha	-	X	-	-
096	b-endosulfan-Beta	-	X	-	-
097	Endosulfan sulfate	-	X	-	-
098	Endrin	-	X	-	-
099	Endrin aldehyde	-	X	-	-
100	Heptachlor	-	X	-	-
101	Heptachlorepoxyde	-	X	-	-
102	a-BHC-Alpha	-	X	-	-
103	b-BHC-Beta	-	X	-	-
104	r-BHC-Gamma	-	X	-	-
105	g-BHC-Delta	-	X	-	-
106	PCB-1242	-	X	-	-
107	PCB-1254	-	X	-	-
108	PCB-1221	-	X	-	-
109	PCB-1232	-	X	-	-
110	PCB-1248	-	X	-	-
111	PCB-1260	-	X	-	-
112	PCB-1016	-	X	-	-
113	Toxaphene	-	X	-	-
114	Antimony	-	-	-	X
115	Arsenic	-	-	-	X
116	Asbestos	X	-	-	-
117	Beryllium	-	-	X	-
118	Cadmium	-	-	-	X
119	Chromium	-	-	-	X
120	Copper	-	-	-	X
121	Cyanide	-	-	-	X
122	Lead	-	-	-	X
123	Mercury	-	-	X	-
124	Nickel	-	-	-	X
125	Selenium	-	-	-	X
126	Silver	-	-	-	X
127	Thallium	-	-	-	X
128	Zinc	-	-	-	X
129	2,3,7,8-Tetrachlorodibenzo-p-dioxin	X	-	-	-
130	Xylene	-	-	-	X
	Aluminum	-	-	-	X
	Ammonia-n	-	-	-	X
	Dissolved Iron	-	-	-	X
	Fluoride	-	-	-	X
	Hexavalent Chromium	-	-	-	X
	Manganese	-	X	-	-
	Oil and Grease	-	-	-	X
	pH	-	-	-	X
	Phenols(4AAP)	-	-	-	X
	Chlorine Residual	-	-	-	X
	Total Suspended Solids	-	-	-	X

Key:

X: Indicates heading which applies to pollutant.

-: Indicates heading which does not apply to pollutant.

Not Detected: Not detected in any raw waste samples analyzed.

Unique Occurrence: Found at one or two plants at low levels.

Not Treatable: Detected at levels below practical treatability levels.

Reg. Considered: Found in average concentrations of greater than 10 ppb in at least one iron and steel subcategory.

Appendix C—Regulated Pollutants Iron & Steel Industry

A. Cokemaking

Total Suspended Solids

Oil & Grease

Ammonia

Cyanide

Phenols (4AAP)

Benzene

Naphthalene

Benzo (a)pyrene

pH

B. Sintering

Total Suspended Solids

Oil & Grease

Ammonia

Cyanide

Phenols (4AAP)

Total Residual Chlorine

Lead

Zinc

pH

C. Ironmaking

Total Suspended Solids

Oil & Grease

Ammonia

Cyanide

Phenols (4AAP)

Benzene

Total Residual Chlorine

Lead

Zinc

pH

D. Steelmaking

1. Basic Oxygen Furnace

Total Suspended Solids

Lead

Zinc

pH

2. Open Hearth Furnace

Total Suspended Solids

Lead

Zinc

pH

3. Electric Arc Furnace

Total Suspended Solids

Lead

Zinc

pH

E. Vacuum Degassing

Total Suspended Solids

Lead

Zinc

pH

F. Continuous Casting

Total Suspended Solids

Oil & Grease

Lead

Zinc

pH

G. Hot Forming

Total Suspended Solids

Oil & Grease

pH

H. Scale Removal

1. Oxidizing

Total Suspended Solids

Chromium

Nickel

pH

2. Reducing

Total Suspended Solids

Cyanide

Chromium
Nickel
pH
I. Acid Pickling
1. Sulfuric Acid Pickling
Total Suspended Solids
Lead
Zinc
pH
2. Hydrochloric Acid Pickling
Total Suspended Solids
Lead
Zinc
pH
3. Combination Acid Pickling
Total Suspended Solids
Chromium
Nickel
pH
J. Cold Forming
Total Suspended Solids
Oil & Grease
Chromium
Lead
Nickel
Zinc
Naphthalene
Tetrachloroethylene
pH
K. Alkaline Cleaning
Total Suspended Solids
Oil and Grease
pH
L. Hot Coating
Total Suspended Solids
Oil & Grease
Chromium (Hexavalent)
Lead
Zinc
pH
Title 40 of the Code of Federal Regulations is amended by revising Part 420 to read as follows:

PART 420—IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY

General Provisions

Sec.
420.01 Applicability.
420.02 General definitions.
420.03 Alternate effluent limitations

Subpart A—Cokemaking Subcategory

420.10 Applicability; description of the cokemaking subcategory.
420.11 Specialized definitions.
420.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.14 New source performance standards (NSPS).
420.15 Pretreatment standards for existing sources (PSES).

Sec.
420.16 Pretreatment standards for new sources (PSNS).
420.17 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart B—Sintering Subcategory

420.20 Applicability; description of the sintering subcategory.
420.21 Specialized definitions.
420.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.24 New source performance standards (NSPS).
420.25 Pretreatment standards for existing sources (PSES).
420.26 Pretreatment standards for new sources (PSNS).
420.27 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart C—Ironmaking Subcategory

420.30 Applicability; description of the ironmaking subcategory.
420.31 Specialized definitions.
420.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.34 New source performance standards (NSPS).
420.35 Pretreatment standards for existing sources (PSES).
420.36 Pretreatment standards for new sources (PSNS).
420.37 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart D—Steelmaking Subcategory

420.40 Applicability; description of the steelmaking subcategory.
420.41 Specialized definitions.
420.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.44 New source performance standards (NSPS).
420.45 Pretreatment standards for existing sources (PSES).

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420.46 Pretreatment standards for new sources (PSNS).
420.47 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart E—Vacuum Degassing Subcategory

420.50 Applicability; description of the vacuum degassing subcategory.
420.51 Specialized definitions.
420.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.54 New source performance standards (NSPS).
420.55 Pretreatment standards for existing sources (PSES).
420.56 Pretreatment standards for new sources (PSNS).
420.57 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT). [Reserved]

Subpart F—Continuous Casting Subcategory

420.60 Applicability; description of the continuous casting subcategory.
420.61 Special definitions.
420.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.64 New source performance standards (NSPS).
420.65 Pretreatment standards for existing sources (PSES).
420.66 Pretreatment standards for new sources (PSNS).
420.67 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart G—Hot Forming Subcategory

420.70 Applicability; description of the hot forming subcategory.
420.71 Specialized definitions.
420.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

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420.74 New source performance standards (NSPS).
420.75 Pretreatment standards for existing sources (PSES).
420.76 Pretreatment standards for new sources (PSNS).
420.77 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart H—Scale Removal Subcategory

- 420.80 Applicability; description of the scale removal subcategory.
420.81 Specialized definitions.
420.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.84 New source performance standards (NSPS).
420.85 Pretreatment standards for existing sources (PSES).
420.86 Pretreatment standards for new sources (PSNS).
420.87 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart I—Acid Pickling Subcategory

- 420.90 Applicability; description of the acid pickling subcategory.
420.91 Specialized definitions.
420.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.94 New source performance standards (NSPS).
420.95 Pretreatment standards for existing sources (PSES).
420.96 Pretreatment standards for new sources (PSNS).
420.97 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart J—Cold Forming Subcategory

- 420.100 Applicability; description of the cold forming subcategory.
420.101 Specialized definitions.
420.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.104 New source performance standards (NSPS).

- Sec.
420.105 Pretreatment standards for existing sources (PSES).
420.106 Pretreatment standards for new sources (PSNS).
420.107 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart K—Alkaline Cleaning Subcategory

- 420.110 Applicability; description of the alkaline cleaning subcategory.
420.111 Specialized definitions.
420.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.114 New source performance standards (NSPS).
420.115 Pretreatment standards for existing sources (PSES).
420.116 Pretreatment standards for new sources (PSNS).
420.117 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart L—Hot Coating Subcategory

- 420.120 Applicability; description of the hot coating-galvanizing subcategory.
420.121 Specialized definitions.
420.122 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
420.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.124 New source performance standards (NSPS).
420.125 Pretreatment standards for existing sources (PSES).
420.126 Pretreatment standards for new sources (PSNS).
420.127 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Authority: Sections 301; 304 (b), (c), (e), and (g); 306 (b) and (c); 307; 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311; 1314 (b), (c), (e), and (g); 1316 (b) and (c); 1317; 1318; and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567; Pub. L. 95-217.

General Provisions

§ 420.01 Applicability.

(a) The provisions of this part apply to discharges and to the introduction of pollutants into a publicly owned treatment works resulting from production operations in the Iron and Steel Point Source Category.

(b) Control Treatment Facilities: The following central treatment facilities presently discharging through the specified outfall are temporarily excluded from the provisions of this part, *provided*, the owner or operator of the facility requests the Agency to consider establishing alternative effluent limitations and provides the Agency with the information set out in section (b)(2), on or before July 26, 1982.

Plant	NPDES permit No.	Central treatment facility
1. Armco Steel, Ashland, KY.	KY 0000485	Total Plant.
2. Bethlehem Steel, Sparrows Point, MD.	MD 0001201	Humphrey's Creek Outfall 014.
3. Bethlehem Steel, Burns Harbor, IN.	IN 0000175	Total Plant.
4. Ford Motor Co., Dearborn, MI.	MI 0003361	Schaefer Road Treatment Plant.
5. Interlake, Inc., ¹ Riverdale, IL.	IL 0002119	Discharge to POTW.
6. J&L Steel, Aliquippa, PA.	PA 0008131	Chemical Rinse Treatment Plant Outfall 018.
7. J&L Steel, Cleveland, OH.	OH 0000850	Hot Forming and Finishing Treatment Plant.
8. J&L Steel, Hennepin, IL.	IL 0002631	Total Plant.
9. J&L Steel, Louisville, OH.	OH 0007188	Total Plant.
10. J&L Steel, East Chicago, IN.	IN 0000205	Terminal Treatment Plant.
11. Laclede Steel, Alton, IL.	IL 0000612	Total Plant.
12. National Steel, Granite City, IL.	IL 0000329	Total Plant.
13. National Steel, Portage, IN.	IN 0002445	Total Plant.
14. National Steel, Weirton, WV.	WV 0003336	Outfall B.
15. Republic Steel, Gadsden, AL.	AL 0003522	Total Plant.
16. Republic Steel, ¹ Chicago, IL 0002593.	IL 0002593	Discharge to POTW.
17. U.S. Steel, Lorain, OH.	OH 0001582	Pipe Mill Lagoon.
18. U.S. Steel, Provo, UT.	UT 0000361	Total Plant.
19. U.S. Steel, Fairless Hills, PA.	PA 0013463	Terminal Treatment Plant.
20. U.S. Steel, Gary, IN.	IN 0000281	Terminal Lagoons.
21. U.S. Steel, ¹ Chicago, IL.	IL 0002691	Discharge to POTW.

¹ The request for alternative effluent limitations for these plants are for indirect discharges to POTWs.

(2) The information to be submitted with the request for consideration of alternative effluent limitations is to include:

(i) A schematic diagram of the existing wastewater treatment facility showing each source of wastewater, cooling water, and other waters entering the treatment facility; discharge and recycle flow rates for each water source and each major treatment component;

(ii) Existing monitoring data relating to discharges to and from the central treatment facility including pollutant concentrations, flows and mass loadings; As a minimum, monitoring data should be provided for a six month period of normal operation of the

production and treatment facilities. The complete data as well as a data summary including the maximum, minimum, and mean gross discharge loadings and the standard deviation of the discharge loadings for each monitored pollutant should be provided. Any supplemental monitoring data for toxic pollutants should also be provided.

(iii) A scale map of the area of the plant served by the wastewater treatment facility, including the treatment facility and water supply and discharge points;

(iv) An estimate of the least costly investment required to meet the generally applicable limitations or standards for the facility and a description of such treatment system including schematic diagrams showing the major treatment system components and flow rates through the system. As a minimum, the cost estimates should be comprised of a single page summary for each water pollution control system showing estimated installed direct cost totals for mechanical equipment; piping and instrumentation; foundations and structural components; and, electrical components. Indirect costs for contingencies, overhead and profit, engineering fees, and any other indirect costs must be itemized separately. The sum of the direct and indirect costs which represents the owner's or operator's total estimate, must be shown.

(v) The effluent limitations or standards which could be achieved if the discharger were to spend an amount equal to the Agency's model treatment system cost estimate for the facility and the treatment facilities which would be used to meet those limitations or standards. Schematic diagrams and cost estimates as outlined in paragraph (b)(2)(iv) above should be provided for each treatment system; and,

(vi) Production rates in tons per day for each process contributing wastewater to the central treatment facility consistent with those reported by the owner or operator in the NPDES permit application for the central treatment facility.

(3) The request described in subsection (b)(1) above must be based upon the owner's or operator's belief that the cost of bringing the specified central treatment facilities into compliance with the provisions of this part would require expenditures so high compared to the Agency's model treatment system cost estimate applicable to that facility that the applicable limitations or standards would not represent BPT, BAT, BCT, or

PSES, as the case may be, for the facility.

§ 420.02 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) The term "TSS" (or total suspended solids, or total suspended residue) means the value obtained by the method specified in 40 CFR 136.3.

(b) The term "oil and grease" (or O&G) means the value obtained by the method specified in 40 CFR 136.3.

(c) The term "ammonia-N" (or ammonia-nitrogen) means the value obtained by manual distillation (at pH 9.5) followed by the Nesslerization method specified in 40 CFR 136.3.

(d) The term "cyanide" means total cyanide and is determined by the method specified in 40 CFR 136.3.

(e) The term "phenols 4AAP" (or phenolic compounds) means the value obtained by the method specified in 40 CFR 136.3.

(f) The term "TRC" (or total residual chlorine) means the value obtained by the iodometric titration with an amperometric endpoint method specified in 40 CFR 136.3.

(g) The term "chromium" means total chromium and is determined by the method specified in 40 CFR 136.3.

(h) The term "hexavalent chromium" (or chromium VI) means the value obtained by the method specified in 40 CFR 136.3.

(i) The term "copper" means total copper and is determined by the method specified in 40 CFR 136.3.

(j) The term "lead" means total lead and is determined by the method specified in 40 CFR 136.3.

(k) The term "nickel" means total nickel and is determined by the method specified in 40 CFR 136.3.

(l) The term "zinc" means total zinc and is determined by the method specified in 40 CFR 136.3.

(m) The term "benzene" (or priority pollutant No. 4) means the value obtained by the standard method Number 602 specified in 44 FR 69464, 69570 (December 3, 1979).

(n) The term "benzo(a)pyrene" (or priority pollutant No. 73) means the value obtained by the standard method Number 610 specified in 44 FR 69464, 69570 (December 3, 1979).

(o) The term "naphthalene" (or priority pollutant No. 55) means the value obtained by the standard method Number 610 specified in 44 FR 69464, 69571 (December 3, 1979).

(p) The term "tetrachloroethylene" (or

priority pollutant No. 85) means the value obtained by the standard method Number 610 specified in 44 FR 69464, 69571 (December 3, 1979).

(q) The term "pH" means the value obtained by the standard method specified in 40 CFR 136.3.

§ 420.03 Alternative effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available, best available technology, and best conventional technology.

Except as provided in paragraphs (a) through (c) below, any existing point source subject to this part may qualify for alternative effluent limitations to those specified in Part 420, Subparts A through L for a number of its processes representing the degree of effluent reduction attainable by the application of best practicable control technology currently available, best available technology economically achievable, and best conventional technology. The alternative effluent limitations are determined for a combination of processes by totaling the mass limitations of each pollutant allowed under the applicable Subparts A through L. The point source must achieve the total mass limitation for each pollutant for the combination of processes.

(a) A discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would result in an increase in the amount of pollutants discharged from a combination of processes over that allowed under the limitations established by applicable Subparts A through L.

(b) A discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would result in violation of any applicable state water quality standards.

(c) Each outfall from which process wastewaters are discharged must have specific, fixed effluent limitations for each pollutant limited by the applicable Subparts A through L.

(d) Subcategory—Specific Restrictions

(1) There shall be no alternate effluent limitations for cokemaking process wastewaters.

(2) There shall be no alternate effluent limitations for cold forming process wastewaters.

Subpart A—Cokemaking Subcategory

§ 420.10 Applicability; description of the cokemaking subcategory.

The provisions of this subpart are

applicable to discharges and introduction of pollutants into publicly owned treatment works resulting from by-product and beehive cokemaking operations.

§ 420.11 Specialized definitions.

(a) The term "beehive cokemaking" means those operations in which coal is heated with the admission of air in controlled amounts for the purpose of producing coke. There are no by-product recovery operations associated with beehive cokemaking operations.

(b) The term "by-product cokemaking" means those cokemaking operations in which coal is heated in the absence of air to produce coke. In this process, by-products may be recovered from the gases and liquids driven from the coal during cokemaking.

(c) The term "merchant" means those by-product cokemaking operations which provide more than fifty percent of the coke produced to operations, industries, or processes other than iron making blast furnaces associated with steel production.

(d) The term "iron and steel" means those by-product cokemaking operations other than merchant cokemaking operations.

(e) The term "wet desulfurization system" means those systems which remove sulfur compounds from coke oven gases and produce a contaminated process wastewater.

(f) The term "indirect ammonia recovery system" means those systems which recover ammonium hydroxide as a by-product from coke oven gases and waste ammonia liquors.

(g) The term "physical chemical treatment system" means those full scale coke plant wastewater treatment systems incorporating full scale granular activated carbon adsorption units which were in operation prior to January 7, 1981, the date of proposal of this regulation.

§ 420.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) By-product cokemaking—iron and steel.

SUBPART A

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.253	0.131
O&G.....	0.0327	0.0109
Ammonia-N.....	0.274	0.0912
Cyanide.....	0.0657	0.0219
Phenols (4AAP).....	0.00451	0.00150
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(1) Increased loadings, not to exceed 11 percent of the above limitations, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 27 percent of the above limitations, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent that such systems generate an increased effluent volume.

(b) By-product cokemaking—merchant.

SUBPART A

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.270	0.140
O&G.....	0.0349	0.0116
Ammonia-N.....	0.292	0.0973
Cyanide.....	0.0701	0.0234
Phenols (4AAP).....	0.00481	0.00160
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(1) Increased loadings, not to exceed 10 percent of the above limitations, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 25 percent of the above limitations, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent that such systems generate an increased effluent volume.

(C) *Beehive cokemaking.* No discharge of process wastewater pollutants to navigable waters.

§ 420.13 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) By-product cokemaking—iron and steel.

SUBPART A

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.0543	0.0160
Cyanide.....	0.00638	0.00351
Phenols (4AAP).....	0.0000638	0.0000319
Benzene.....	0.0000319	
Naphthalene.....	0.0000319	
Benzo(a)pyrene.....	0.0000319	

(1) Increased loadings, not to exceed 16 percent of the above limitations, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 39 percent of the above limitations, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(3) The following BAT effluent limitations shall be applicable to by-product coke plants with physical chemical treatment systems:

SUBPART A

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.0645	0.0322
Phenols (4AAP).....	0.0000859	0.0000430
Benzene.....	0.0000215	
Naphthalene.....	0.0000215	
Benzo(a)pyrene.....	0.0000215	

Increased loadings, not to exceed 24 percent of the above limitations, are allowed for by-product coke plants with physical chemical treatment systems which have wet desulfurization systems

but only to the extent such systems generate an increased effluent volume.

(b) *By-product cokemaking—merchant.*

SUBPART A

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.0603	0.0177
Cyanide.....	0.00709	0.00390
Phenols (4AAP).....	0.0000709	0.0000355
Benzene.....	0.0000355	
Naphthalene.....	0.0000355	
Benzo(a)pyrene.....	0.0000355	

(1) Increased loadings, not to exceed 15 percent of the above limitations, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 35 percent of the above limitations, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(3) The following BAT effluent limitations shall be applicable to by-product coke plants with physical chemical treatment systems:

SUBPART A

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.0751	0.0375
Phenols(4AAP).....	0.000100	0.0000501
Benzene.....	0.0000250	
Naphthalene.....	0.0000250	
Benzo(a)pyrene.....	0.0000250	

Increased loadings, not to exceed 21 percent of the above limitations, are allowed for by-product coke plants with physical chemical treatment systems which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(c) *Beehive cokemaking.* No discharge of process wastewater pollutants to navigable waters.

§ 420.14 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) *By-product cokemaking—iron and steel.*

SUBPART A

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.172	0.0894
O&G.....	0.00638	
Ammonia-N.....	0.0543	0.0180
Cyanide.....	0.00838	0.00351
Phenols (4AAP).....	0.0000638	0.0000319
Benzene.....	0.0000319	
Naphthalene.....	0.0000319	
Benzo(a)pyrene.....	0.0000319	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(1) Increased loadings, not to exceed 16 percent of the above standards, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 39 percent of the above standards, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(b) *By-product cokemaking—merchant.*

SUBPART A

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.192	0.0993
O&G.....	0.00709	
Ammonia-N.....	0.0603	0.0177
Cyanide.....	0.00709	0.00390
Phenols (4AAP).....	0.0000709	0.0000355
Benzene.....	0.0000355	
Naphthalene.....	0.0000355	
Benzo(a)pyrene.....	0.0000355	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(1) Increased loadings, not to exceed 15 percent of the above standards, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 35 percent of the above standards, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(c) *Beehive cokemaking.*

No discharge of process wastewater pollutants to navigable waters.

§ 420.15 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) *By-product cokemaking—iron and steel.*

SUBPART A

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.0645	0.0322
Cyanide.....	0.0172	0.00859
Phenols (4AAP).....	0.0430	0.0215

(1) Increased loadings, not to exceed 24 percent of the above standards, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 58 percent of the above standards, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(b) *By-product cokemaking—merchant.*

SUBPART A

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.0751	0.0375
Cyanide.....	0.0200	0.0100
Phenols (4AAP).....	0.0501	0.0250

(1) Increased loadings, not to exceed 21 percent of the above standards, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 50 percent of the above standards, are

allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(c) *Beehive cokemaking* [Reserved].

§ 420.16 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) *By-product cokemaking—iron and steel.*

SUBPART A

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Ammonia-N.....	0.0645	0.0322
Cyanide.....	0.0172	0.00859
Phenols (4AAP).....	0.0430	0.0215

(1) Increased loadings, not to exceed 24 percent of the above standards, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 58 percent of the above standards, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(b) *By-product cokemaking—merchant.*

SUBPART A

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Ammonia-N.....	0.0751	0.0375
Cyanide.....	0.0200	0.0100
Phenols (4AAP).....	0.0501	0.0250

(1) Increased loadings, not to exceed 21 percent of the above standards, are allowed for by-product coke plants which have wet desulfurization systems

but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 50 percent of the above standards, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent such systems generate an increased effluent volume.

(c) *Beehive cokemaking* [Reserved].

§ 420.17 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR § 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

(a) *By-product cokemaking—iron and steel.*

SUBPART A

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.253	0.131
O&G.....	0.0327	0.0109
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(1) Increased loadings, not to exceed 11 percent of the above limitations, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 27 percent of the above limitations, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent that such systems generate an increased effluent volume.

(b) *By-product cokemaking—merchant.*

SUBPART A

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.270	0.140
O&G.....	0.0348	0.0116

SUBPART A—Continued

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(1) Increased loadings, not to exceed 10 percent of the above limitations, are allowed for by-product coke plants which have wet desulfurization systems but only to the extent such systems generate an increased effluent volume.

(2) Increased loadings, not to exceed 25 percent of the above limitations, are allowed for by-product coke plants which include indirect ammonia recovery systems but only to the extent that such systems generate an increased effluent volume.

(c) *Beehive cokemaking.* No discharge of process wastewater pollutants to navigable waters.

Subpart B—Sintering Subcategory

§ 420.20 Applicability; description of the sintering subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from sintering operations conducted by the heating of iron bearing wastes (mill scale and dust from blast furnaces and steelmaking furnaces) together with fine iron ore, limestone, and coke fines in an ignition furnace to produce an agglomerate for charging to the blast furnace.

§ 420.21 Specialized definitions [Reserved].

§ 420.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

SUBPART B

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0751	0.0250
O&G.....	0.0150	0.00501
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

SUBPART B

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Ammonia-N ¹	0.0150	0.00501
Cyanide ¹	0.00100	0.000501
Phenols (4AAP) ¹	0.000100	0.0000501
TRC ¹	0.000250	
Lead.....	0.000375	0.000125
Zinc.....	0.000450	0.000150

¹ The limitations for ammonia-N, cyanide, phenols (4AAP), and TRC shall be applicable only when sintering wastewaters are treated with ironmaking wastewaters.

§ 402.24 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

SUBPART B

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0200	0.00751
O&G.....	0.00501	
Ammonia-N ¹	0.0150	0.00501
Cyanide ¹	0.00100	0.000501
Phenols(4AAP) ¹	0.000100	0.0000501
TRC ¹	0.000250	
Lead.....	0.000375	0.000125
Zinc.....	0.000450	0.000150

SUBPART B—Continued

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH.....	(¹)	(¹)

¹ The standards for ammonia-N, cyanide, phenols (4AAP), and TRC shall be applicable only when sintering wastewaters are treated with ironmaking wastewaters.

§ 420.25 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

SUBPART B

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Ammonia-N ¹	0.0150	0.00501
Cyanide ¹	0.00100	0.000501
Phenols(4AAP) ¹	0.000100	0.0000501
Lead.....	0.000375	0.000125
Zinc.....	0.000450	0.000150

¹ The standards for ammonia-N, cyanide, and phenols (4AAP), shall be applicable only when sintering wastewaters are treated with ironmaking wastewaters.

§ 420.26 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

SUBPART B

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Ammonia-N ¹	0.0150	0.00501
Cyanide ¹	0.00100	0.000501
Phenols (4AAP) ¹	0.000100	0.0000501
Lead.....	0.000375	0.000125
Zinc.....	0.000450	0.000150

¹ The standards for ammonia-N, cyanide, and phenols (4AAP) shall be applicable only when sintering wastewaters are treated with ironmaking wastewaters.

§ 420.27 [Reserved]

Subpart C—Ironmaking Subcategory

§ 420.30 Applicability; description of the ironmaking subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from ironmaking operations in which iron ore is reduced to molten iron in a blast furnace.

§ 420.31 Specialized definitions.

(a) The term "ferromanganese blast furnace" means those blast furnaces which produce molten iron containing more than fifty percent manganese.

(b) The term "iron blast furnace" means all blast furnaces except ferromanganese blast furnaces.

§ 420.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR § 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Iron blast furnace.

SUBPART C

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0782	0.0260
Ammonia-N.....	0.161	0.0537
Cyanide.....	0.0234	0.00782
Phenols (4AAP).....	0.00626	0.00210
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) Ferromanganese blast furnace.

SUBPART C

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.313	0.104
Ammonia-N.....	1.29	0.429
Cyanide.....	0.469	0.156
Phenols (4AAP).....	0.0624	0.0208
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) *Iron blast furnace.*

SUBPART C

Pollutant or pollutant property	BAT effluent limitations	Average of daily values for 30 consecutive days
	Maximum for any 1 day	
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.00876	0.00292
Cyanide.....	0.000584	0.000292
Phenols (4AAP).....	0.000584	0.000292
TRC ¹	0.000146	
Lead.....	0.000219	0.0000730
Zinc.....	0.000263	0.0000876

¹The limitation for TRC shall be applicable only when chlorination of ironmaking wastewaters is practiced.

(b) *Ferromanganese blast furnace*
[Reserved].

§ 420.34 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) *Iron blast furnace.*

SUBPART C

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of products		
TSS.....	0.0117	0.00438
O&G.....	0.00292	
Ammonia-N.....	0.00876	0.00292
Cyanide.....	0.000584	0.000292
Phenols (4AAP).....	0.000584	0.000292
TRC ¹	0.000146	
Lead.....	0.000219	0.0000730
Zinc.....	0.000263	0.0000876
pH.....	(²)	(²)

¹The standards for TRC shall be applicable only when chlorination of ironmaking wastewaters is practiced.

²Within the range of 6.0 to 9.0.

(b) *Ferromanganese blast furnace*
[Reserved].

§ 420.35 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40

CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) *Iron blast furnace.*

SUBPART C

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of products		
Ammonia-N.....	0.00876	0.00292
Cyanide.....	0.000584	0.000292
Phenols (4AAP).....	0.000584	0.000292
Lead.....	0.000219	0.0000730
Zinc.....	0.000263	0.0000876

(b) *Ferromanganese blast furnace*
[Reserved].

§ 420.36 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) *Iron blast furnace.*

SUBPART C

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Ammonia-N.....	0.00876	0.00292
Cyanide.....	0.000584	0.000292
Phenols (4AAP).....	0.000584	0.000292
Lead.....	0.000219	0.0000730
Zinc.....	0.000263	0.0000876

(b) *Ferromanganese blast furnace*
[Reserved].

§ 420.37 [Reserved]

Subpart D—Steelmaking Subcategory

§ 420.40 Applicability; description of the steelmaking subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from steelmaking operations conducted in basic oxygen, open hearth, and electric arc furnaces.

§ 420.41 Specialized definitions.

(a) The term "basic oxygen furnace steelmaking" means the production of steel from molten iron, steel scrap,

fluxes, and various combinations thereof, in refractory lined furnaces by adding oxygen.

(b) The term "open hearth furnace steelmaking" means the production of steel from molten iron, steel scrap, fluxes, and various combinations thereof, in refractory lined fuel-fired furnaces equipped with regenerative chambers to recover heat from the flue and combustion gases.

(c) The term "electric arc furnace steelmaking" means the production of steel principally from steel scrap and fluxes in refractory lined furnaces by passing an electric current through the scrap or steel bath.

(d) The term "wet" means those steelmaking air cleaning systems that primarily use water for furnace gas cleaning.

(e) The term "semi-wet" means those steelmaking air cleaning systems that use water for the sole purpose of conditioning the temperature and humidity of furnace gases such that the gases may be cleaned in dry air pollution control systems.

(f) The term "open combustion" means those basic oxygen furnace steelmaking wet air cleaning systems which are designed to allow excess air to enter the air pollution control system for the purpose of combusting the carbon monoxide in furnace gases.

(g) The term "suppressed combustion" means those basic oxygen furnace steelmaking wet air cleaning systems which are designed to limit or suppress the combustion of carbon monoxide in furnace gases by restricting the amount of excess air entering the air pollution control system.

§ 420.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

(b) *Basic oxygen furnace steelmaking—wet-suppressed combustion.*

SUBPART D

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of Product	
TSS.....	0.0312	0.0104
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(c) *Basic oxygen furnace steelmaking—wet open combustion; open hearth furnace steelmaking—wet; and electric arc furnace steelmaking—wet.*

SUBPART D

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0687	0.0229
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

§ 420.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

(b) *Basic oxygen furnace steelmaking—wet-suppressed combustion.*

SUBPART D

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.000188	0.0000626
Zinc.....	0.000282	0.0000939

(c) *Basic oxygen furnace steelmaking—wet open combustion; open hearth furnace steelmaking—wet;*

and electric arc furnace steelmaking—wet;

SUBPART D

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.000413	0.000138
Zinc.....	0.000620	0.000207

§ 420.44 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* [Reserved]

(b) *Basic oxygen furnace steelmaking—wet-suppressed combustion.*

SUBPART D

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0146	0.00522
Lead.....	0.000188	0.0000626
Zinc.....	0.000282	0.0000939
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

SUBPART D

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0321	0.0115
Lead.....	0.000413	0.000138
Zinc.....	0.000620	0.000207
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(d) *Open hearth furnace steelmaking—wet.* [Reserved]

§ 420.45 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.*

[Reserved]

(b) *Basic oxygen furnace steelmaking—wet-suppressed combustion.*

SUBPART D

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.000188	0.0000626
Zinc.....	0.000282	0.0000939

(c) *Basic oxygen furnace steelmaking—wet open combustion; open hearth furnace steelmaking—wet; and electric arc furnace steelmaking—wet.*

SUBPART D

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.000413	0.000138
Zinc.....	0.000620	0.000207

§ 420.46 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* [Reserved]

(b) *Basic oxygen furnace steelmaking—wet-suppressed combustion.*

SUBPART D

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.000188	0.000626
Zinc	0.000282	0.000939

(c) Basic oxygen furnace steelmaking—wet—open combustion; electric arc furnace steelmaking—wet.

SUBPART D

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.000413	0.000138
Zinc	0.000620	0.000207

(d) Open hearth furnace steelmaking—wet. [Reserved]

§ 420.47 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional control technology.

(a) Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet. No discharge of process wastewater pollutants to navigable waters.

(b) Basic oxygen furnace steelmaking—wet-suppressed combustion. [Reserved]

(c) Basic oxygen furnace steelmaking—wet—open combustion; electric arc furnace steelmaking—wet. [Reserved]

(d) Open hearth furnace steelmaking—wet. [Reserved]

Subpart E—Vacuum Degassing Subcategory

§ 420.50 Applicability; description of the vacuum degassing subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from vacuum degassing operations conducted by applying a vacuum to molten steel.

§ 420.51 Specialized definitions. [Reserved]

§ 420.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

SUBPART E

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0156	0.00521
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.53 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

SUBPART E

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000939	0.0000313
Zinc	0.000141	0.0000469

§ 420.54 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the values set forth below.

SUBPART E

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.00730	0.00261
Lead	0.0000939	0.0000313
Zinc	0.000141	0.0000469
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.55 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

SUBPART E

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000939	0.0000313
Zinc	0.000141	0.0000469

§ 420.56 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

SUBPART E

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000939	0.0000313
Zinc	0.000141	0.0000469

§ 420.57 [Reserved]

Subpart F—Continuous Casting Subcategory**§ 420.60 Applicability; description of the continuous casting subcategory.**

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from the continuous casting of molten steel into intermediate or semi-finished steel products through water cooled molds.

§ 420.61 Specialized definitions. [Reserved]**§ 420.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.**

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

SUBPART F

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0780	0.0260
Oil & Grease.....	0.0234	0.0078
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.63 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

SUBPART F

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.0000939	0.0000313
Zinc.....	0.000141	0.0000469

§ 420.64 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

SUBPART F

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.00730	0.00261
O&G.....	0.00313	0.00104
Lead.....	0.0000939	0.0000313
Zinc.....	0.000141	0.0000469
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.65 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

SUBPART F

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.0000939	0.0000313
Zinc.....	0.000141	0.0000469

§ 420.66 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

SUBPART F

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.0000939	0.0000313

SUBPART F—Continued

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Zinc.....	0.000141	0.0000469

§ 420.67 [Reserved]**Subpart G—Hot Forming Subcategory****§ 420.70 Applicability; description of the hot forming subcategory.**

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from hot forming operations conducted in primary, section, flat, and pipe and tube mills.

§ 420.71 Specialized definitions.

(a) The term "hot forming" means those steel operations in which solidified, heated steel is shaped by rolls.

(b) The term "primary mill" means those steel hot forming operations that reduce ingots to blooms or slabs by passing the ingots between rotating steel rolls. The first hot forming operation performed on solidified steel after it is removed from the ingot molds is carried out on a "primary mill".

(c) The term "section mill" means those steel hot forming operations that produce a variety of finished and semi-finished steel products other than the products of those mills specified below in subsections (d), (e), (g), and (h).

(d) The term "flat mill" means those steel hot forming operations that reduce heated slabs to plates, strip and sheet, or skelp.

(e) The term "pipe and tube mill" means those steel hot forming operations that produce butt welded or seamless tubular steel products.

(f) The term "scarfing" means those steel surface conditioning operations in which flames generated by the combustion of oxygen and fuel are used to remove surface metal imperfections from slabs, billets, or blooms.

(g) The term "plate mill" means those steel hot forming operations that produce flat hot-rolled products which are (1) between 8 and 48 inches wide and over 0.23 inches thick; or (2) greater than 48 inches wide and over 0.18 inches thick.

(h) The term "hot strip and sheet mill" means those steel hot forming

operations that produce flat hot-rolled products other than plates.

(i) The term "specialty steel" means those steel products containing alloying elements which are added to enhance the properties of the steel product when individual alloying elements (e.g., aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, vanadium, zirconium) exceed 3% or the total of all alloying elements exceed 5%.

(j) The term "carbon steel" means those steel products other than specialty steel products.

(k) The term "carbon hot forming operation" (or "carbon") means those hot forming operations which produce a majority, on a tonnage basis, of carbon steel products.

(l) The term "specialty hot forming operation" (or "specialty") applies to all hot forming operations other than "carbon hot forming operations."

§ 420.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Primary mills, carbon and specialty.

(1) Without scarfing.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.150	0.0561
O&G.....	0.0374	
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(2) With scarfing.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.221	0.0830
O&G.....	0.0553	

SUBPART G—Continued

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(b) Section mills.

(1) Carbon.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.357	0.134
O&G.....	0.0894	
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(2) Specialty.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.224	0.0841
O&G.....	0.0561	
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(c) Flat mills.

(1) Hot strip and sheet mills, carbon and specialty.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.427	0.160
O&G.....	0.107	
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(2) Carbon plate mills.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.227	0.0851
O&G.....	0.0568	
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(3) Specialty plate mills.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.100	0.0376
O&G.....	0.0250	(?)
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(d) Pipe and tube mills, carbon and specialty.

SUBPART G

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.212	0.0795
O&G.....	0.0530	
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

§ 420.73 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The Agency has determined that there are not significant quantities of toxic pollutants in hot forming wastewaters after compliance with applicable BPT limitations. Accordingly, since the BPT level of treatment provides adequate control, the Agency is not promulgating more stringent BAT limitations.

§ 420.74 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) Primary mills, carbon and specialty.

(1) Without scarfing.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0150	0.00563
O&G.....	0.00373	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) With scarfing.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0234	0.00876
O&G.....	0.00584	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) Section mills.

(1) Carbon.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0334	0.0125
O&G.....	0.00834	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Specialty.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0217	0.00813
O&G.....	0.00542	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(c) Flat mills.

(1) Hot strip and sheet mills, carbon and specialty.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of products		
TSS.....	0.0435	0.0163
O&G.....	0.0109	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Carbon plate mills.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of products		
TSS.....	0.0234	0.00876
O&G.....	0.00584	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(3) Specialty plate mills.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of products		
TSS.....	0.0100	0.00375
O&G.....	0.00250	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(d) Pipe and tube mills, carbon and specialty.

SUBPART G

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of products		
TSS.....	0.0369	0.0138
O&G.....	0.00917	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.75 Pretreatment standards for existing sources.

Any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 420.76 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 420.77 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

(a) Primary mills, carbon and specialty.

(1) Without scarfing.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.150	0.0561
O&G.....	0.0374	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) With scarfing.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.221	0.0830
O&G.....	0.0553	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.(b) Section mills.
(1) Carbon.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.357	0.134
O&G.....	0.0894	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Specialty.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.224	0.0841
O&G.....	0.0561	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(c) Flat mills.

(1) Hot strip and sheet mills, carbon and specialty.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.427	0.160
O&G.....	0.107	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Carbon plate mills.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.227	0.0851
O&G.....	0.0568	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(3) Specialty plate mills.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.100	0.0376
O&G.....	0.0250	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(d) Pipe and tube mills, carbon and specialty.

SUBPART G

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.212	0.0795
O&G.....	0.0530	
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

Subpart H—Salt Bath Descaling Subcategory

§ 420.80 Applicability; description of the salt bath descaling subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from oxidizing and reducing salt bath descaling operations.

§ 420.81 Specialized definitions.

(a) The term "salt bath descaling, oxidizing" means the removal of scale from semi-finished steel products by the action of molten salt baths other than those containing sodium hydride.

(b) The term "salt bath descaling, reducing" means the removal of scale from semi-finished steel products by the action of molten salt baths containing sodium hydride.

(c) The term "batch, sheet and plate" means those descaling operations that remove surface scale from sheet and plate products in batch processes.

(d) The term "batch, rod and wire" means those descaling operations that remove surface scale from rod and wire products in batch processes.

(e) The term "batch, pipe and tube" means those descaling operations that remove surface scale from pipe and tube products in batch processes.

(f) The term "continuous" means those descaling operations that remove

surface scale from the sheet or wire products in continuous processes.

(g) The term "batch" means those descaling operations in which the products are processed in discrete batches.

§ 420.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Salt bath descaling, oxidizing.

(1) Batch, sheet and plate.

SUBPART H

Pollutant or pollutant property	BPT effluent limitations	
	Maximum of any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.204	0.0876
Chromium.....	0.00292	0.00117
Nickel.....	0.00263	0.000876
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Batch, rod and wire.

SUBPART H

Pollutant or pollutant property	BPT effluent limitations	
	Maximum of any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0123	0.0526
Chromium.....	0.00175	0.000701
Nickel.....	0.00158	0.000526
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(3) Batch, pipe and tube.

SUBPART H

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.496	0.213
Chromium.....	0.00709	0.00284
Nickel.....	0.00638	0.00213
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(4) Continuous.

SUBPART H

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0964	0.0413
Chromium.....	0.00138	0.000551
Nickel.....	0.00124	0.000413
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(b) Salt bath descaling, reducing.

(1) Batch.

SUBPART H

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0949	0.0407
Cyanide.....	0.00102	0.000339
Chromium.....	0.00136	0.000542
Nickel.....	0.00122	0.000407
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(2) Continuous.

SUBPART H

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0532	0.028
Cyanide.....	0.00589	0.00190
Chromium.....	0.00759	0.00304
Nickel.....	0.00683	0.00228
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

§ 420.83 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available

technology economically achievable.

(a) Salt bath descaling, oxidizing.

(1) Batch, sheet and plate.

SUBPART H

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00292	0.00117
Nickel.....	0.00263	0.000878

(2) Batch, rod and wire.

SUBPART H

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00175	0.000701
Nickel.....	0.00158	0.000528

(3) Batch, pipe and tube.

SUBPART H

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00709	0.00284
Nickel.....	0.00638	0.00213

(4) Continuous.

SUBPART H

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00138	0.000551
Nickel.....	0.00124	0.000413

(b) Salt bath descaling, reducing.

(1) Batch.

SUBPART H

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Cyanide.....	0.00102	0.000339
Chromium.....	0.00136	0.000542
Nickel.....	0.00122	0.000407

(2) Continuous.

SUBPART H

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Cyanide.....	0.00589	0.00190
Chromium.....	0.00759	0.00304
Nickel.....	0.00683	0.00228

§ 420.84 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) Salt bath descaling, oxidizing.

(1) Batch, sheet and plate.

SUBPART H

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.204	0.0878
Chromium.....	0.00292	0.00117
Nickel.....	0.00263	0.000878
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

(2) Batch, rod and wire.

SUBPART H

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.123	0.0526
Chromium.....	0.00175	0.000701
Nickel.....	0.00158	0.000528

SUBPART H—Continued

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH.....	(1)	(1)

¹ Within the range of 6.0 to 9.0.

(3) Batch, pipe and tube.

SUBPART H

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.496	0.213
Chromium.....	0.00709	0.00284
Nickel.....	0.00638	0.00213
pH.....	(1)	(1)

¹ Within the range of 6.0 to 9.0.

(4) Continuous.

SUBPART H

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0964	0.0413
Chromium.....	0.00138	0.000551
Nickel.....	0.00124	0.000413
pH.....	(1)	(1)

¹ Within the range of 6.0 to 9.0.

(b) Salt bath descaling, reducing.

(1) Batch.

SUBPART H

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0949	0.0407
Cyanide.....	0.00102	0.000339
Chromium.....	0.00136	0.000542
Nickel.....	0.00122	0.000407
pH.....	(1)	(1)

¹ Within the range of 6.0 to 9.0.

(2) Continuous.

SUBPART H

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.532	0.228
Cyanide.....	0.00569	0.00190
Chromium.....	0.00759	0.00304
Nickel.....	0.00683	0.00228
pH.....	(1)	(1)

¹ Within the range of 6.0 to 9.0.

§ 420.85 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) Salt bath descaling, oxidizing.
(1) Batch, sheet and plate.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00292	0.00117
Nickel.....	0.00263	0.000876

(2) Batch, rod and wire.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00175	0.000701
Nickel.....	0.00158	0.000526

(3) Batch, pipe and tube.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00709	0.00284
Nickel.....	0.00638	0.00213

(4) Continuous.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium.....	0.00136	0.000551
Nickel.....	0.00124	0.000413

(b) Salt bath descaling, reducing.

(1) Batch.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Cyanide.....	0.00102	0.000339
Chromium.....	0.00136	0.000542
Nickel.....	0.00122	0.000407

(2) Continuous.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Cyanide.....	0.00569	0.00190
Chromium.....	0.00759	0.00304
Nickel.....	0.00683	0.00228

§ 420.86 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must

comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) Salt bath descaling, oxidizing.

(1) Batch, sheet and plate.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00292	0.00117
Nickel	0.00263	0.000876

(2) Batch, rod and wire.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00175	0.000701
Nickel	0.00158	0.000526

(3) Batch, pipe and tube.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00709	0.00284
Nickel	0.00638	0.00213

(4) Continuous.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00138	0.000551
Nickel	0.00124	0.000413

(b) Salt bath descaling, reducing.

(1) Batch.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Cyanide	0.00102	0.000339
Chromium	0.00138	0.000542
Nickel	0.00122	0.000407

(2) Continuous.

SUBPART H

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Cyanide	0.00569	0.000190
Chromium	0.00759	0.000304
Nickel	0.00683	0.000228

§ 420.87 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

(a) Salt bath descaling, oxidizing.

(1) Batch, sheet and plate.

SUBPART H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.204	0.0876
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Batch, rod and wire.

SUBPART H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.123	0.0526
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(3) Batch, pipe and tube.

SUBPART H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.496	0.213
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(4) Continuous.

SUBPART H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0964	0.0413
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) Salt bath descaling, reducing.

(1) Batch.

SUBPART H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0949	0.0407
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Continuous.

SUBPART H

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0532	0.228
pH.....	(?)	(?)

¹ Within the range of 6.0 to 9.0.

Subpart I—Acid Pickling Subcategory

§ 420.90 Applicability; description of the acid pickling subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from sulfuric acid, hydrochloric acid, or combination acid pickling operations.

§ 420.91 Specialized definitions.

(a) The term "sulfuric acid pickling" means those operations in which steel products are immersed in sulfuric acid solutions to chemically remove oxides and scale, and those rinsing operations associated with such immersions.

(b) The term "hydrochloric acid pickling" means those operations in which steel products are immersed in hydrochloric acid solutions to chemically remove oxides and scale, and those rinsing operations associated with such immersions.

(c) The term "combination acid pickling" means those operations in which steel products are immersed in solutions of more than one acid to chemically remove scale and oxides, and those rinsing steps associated with such immersions.

(d) The term "fume scrubber" means those pollution control devices used to remove and clean fumes originating in pickling operations.

(e) The term "batch" means those pickling operations which process steel products such as coiled wire, rods, and tubes in discrete batches or bundles.

(f) The term "continuous" means those pickling operations which process steel products other than in discrete batches or bundles.

(g) The term "acid recovery" means those sulfuric acid pickling operations that include processes for recovering the unreacted acid from spent pickling acid solutions.

(h) The term "acid regeneration"

means those hydrochloric acid pickling operations that include processes for regenerating acid from spent pickling acid solutions.

(i) The term "neutralization" means those acid pickling operations that do not include acid recovery or acid regeneration processes.

(j) The term "spent acid solution" (or spent pickle liquor) means those solutions of steel pickling acids which have been used in the pickling process and are discharged or removed therefrom.

(k) The term "rod, wire and coil" means those acid pickling operations that pickle rod, wire or coiled rod and wire products.

(l) The term "bar, billet and bloom" means those acid pickling operations that pickle bar, billet or bloom products.

(m) The term "strip, sheet and plate" means those acid pickling operations that pickle strip, sheet or plate products.

(n) The term "pipe, tube and other" means those acid pickling operations that pickle pipes, tubes or any steel product other than those included in paragraphs (k), (l) and (m) herein.

§ 420.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Sulfuric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire and coil.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0818	0.0350
O&G ¹	0.0350	0.0117
Lead.....	0.000526	0.000175
Zinc.....	0.000350	0.000117
pH.....	(?)	(?)

¹ The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.² Within the range of 6.0 to 9.0.

(2) Bar, billet and bloom.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0263	0.0113
O&G ¹	0.0113	0.00375
Lead.....	0.000169	0.0000563
Zinc.....	0.000113	0.0000375
pH.....	(?)	(?)

¹ The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.² Within the range of 6.0 to 9.0.

(3) Strip, sheet and plate.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.0526	0.0225
O&G ¹	0.0225	0.00751
Lead.....	0.000338	0.000113
Zinc.....	0.000225	0.0000751
pH.....	(?)	(?)

¹ The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.² Within the range of 6.0 to 9.0.

(4) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.146	0.0626
O&G ¹	0.0626	0.0209
Lead.....	0.000939	0.000313
Zinc.....	0.000626	0.000209
pH.....	(?)	(?)

¹ The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.² Within the range of 6.0 to 9.0.

(5) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a sulfuric acid pickling operation.

(b) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire and coil.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.143	0.0613
O&G ¹	0.0613	0.0204
Lead.....	0.000920	0.000307
Zinc.....	0.000613	0.000204
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Strip, sheet and plate.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0818	0.0350
O&G ¹	0.0350	0.0117
Lead.....	0.000526	0.000175
Zinc.....	0.000350	0.000117
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.298	0.128
O&G ¹	0.128	0.0426
Lead.....	0.00192	0.000638
Zinc.....	0.00128	0.000426
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a hydrochloric acid pickling operation.

(5) Acid regeneration.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	38.2	16.3
O&G ¹	16.3	5.45
Lead.....	0.245	0.0819
Zinc.....	0.163	0.0545
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to the absorber vent scrubber wastewater associated with hydrochloric acid regeneration plants.

(c) Combination acid pickling (spent acid solution and rinse waters).

(1) Rod, Wire, and Coil.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.149	0.0638
O&G ¹	0.0638	0.0213
Chromium.....	0.00213	0.000652
Nickel.....	0.00192	0.000638
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0672	0.0288
O&G ¹	0.0288	0.00960
Chromium.....	0.000960	0.000384
Nickel.....	0.000864	0.000288
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Strip, sheet, and plate—continuous.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.438	0.188
O&G ¹	0.188	0.0626
Chromium.....	0.00626	0.00250
Nickel.....	0.00563	0.00188
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Strip, sheet and plate—batch.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.134	0.0576
O&G ¹	0.0576	0.0192
Chromium.....	0.00192	0.000768
Nickel.....	0.00173	0.000576
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.225	0.0964
O&G ¹	0.0964	0.0322
Chromium.....	0.00322	0.00129
Nickel.....	0.00289	0.000964
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(6) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
Chromium.....	0.0819	0.0327
Nickel.....	0.0735	0.0245
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a combination acid pickling operation.

§ 420.93 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the

degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Sulfuric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire and coil.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000526	0.000175
Zinc.....	0.000350	0.000117

(2) Bar, billet and bloom.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000169	0.0000563
Zinc.....	0.000113	0.0000375

(3) Strip, sheet and plate.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000338	0.000113
Zinc.....	0.000225	0.0000751

(4) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000939	0.000313
Zinc.....	0.000626	0.000209

(5) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819

The above limitations shall be applicable to each fume scrubber associated with a sulfuric acid pickling operation.

(b) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire and coil.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000920	0.000397
Zinc.....	0.000613	0.000204

(2) Strip, sheet and plate.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000526	0.000175
Zinc.....	0.000350	0.000117

(3) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.00192	0.000638
Zinc.....	0.00128	0.000426

(4) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead	0.0368	0.0123
Zinc	0.0245	0.00819

The above limitations shall be applicable to each fume scrubber associated with a hydrochloric acid pickling operation.

(5) Acid regeneration.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead	0.245	0.0819
Zinc	0.163	0.0545

The above limitations shall be applicable to the absorber vent scrubber wastewater associated with hydrochloric acid regeneration plants.

(c) Combination acid pickling (spent acid solution and rinse waters).

Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00213	0.000852
Nickel	0.00192	0.000638

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000960	0.000384
Nickel	0.000864	0.000288

(3) Strip, sheet, and plate—continuous.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00826	0.00250
Nickel	0.00583	0.00188

(4) Strip, sheet, and plate—batch.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00192	0.000768
Nickel	0.00173	0.000576

(5) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00322	0.00129
Nickel	0.00289	0.000964

(6) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Chromium	0.0819	0.0327
Nickel	0.0735	0.0245

The above limitations shall be applicable to each fume scrubber associated with a combination acid pickling operation.

§ 420.94 New source performance standards.

The discharge of wastewater pollutants from any new source subject

to this subpart shall not exceed the standards set forth below.

(a) Sulfuric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
TSS	0.0146	0.00626
O&G*	0.00626	0.00209
Lead	0.0000939	0.0000313
Zinc	0.0000626	0.0000209
pH	(1)	(1)

*The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

¹Within the range of 6.0 to 9.0.

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
TSS	0.00876	0.00376
O&G*	0.00376	0.00125
Lead	0.0000563	0.0000188
Zinc	0.0000376	0.0000125
pH	(1)	(1)

*The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

¹Within the range of 6.0 to 9.0.

(3) Strip, sheet, and plate.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0117	0.00501
O&G*	0.00501	0.00167
Lead	0.0000751	0.0000250
Zinc	0.0000501	0.0000167
pH	(1)	(1)

*The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

¹Within the range of 6.0 to 9.0.

(4) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0204	0.00876
O&G ¹	0.00876	0.00292
Lead.....	0.000131	0.0000438
Zinc.....	0.0000876	0.0000292
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a sulfuric acid pickling operation.

(b) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0175	0.00751
O&G ¹	0.00751	0.00250
Lead.....	0.000113	0.0000376
Zinc.....	0.0000751	0.0000250
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Strip, sheet, and plate.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0117	0.00501
O&G ¹	0.00501	0.00167
Lead.....	0.0000751	0.0000250
Zinc.....	0.0000501	0.0000167
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0321	0.0138
O&G ¹	0.0138	0.00459
Lead.....	0.000206	0.0000688
Zinc.....	0.000138	0.0000459
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a hydrochloric acid pickling operation.

(c) Combination acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0204	0.00876
O&G ¹	0.00876	0.00292
Chromium.....	0.000292	0.000117
Nickel.....	0.000263	0.0000876
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0117	0.00501
O&G ¹	0.00501	0.00167
Chromium.....	0.000167	0.0000667
Nickel.....	0.000150	0.0000501
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Strip, sheet and plate—continuous.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0496	0.0213
O&G ¹	0.0213	0.00710
Chromium.....	0.000710	0.000284
Nickel.....	0.000638	0.000213
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Strip, sheet, and plate—batch.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0175	0.00751
O&G ¹	0.00751	0.00250
Chromium.....	0.000250	0.000100
Nickel.....	0.000225	0.0000751
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0292	0.0125
O&G ¹	0.0125	0.00418
Chromium.....	0.000418	0.000167
Nickel.....	0.000378	0.000125
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(6) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
Chromium.....	0.0819	0.0327
Nickel.....	0.0735	0.0245
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a combination acid pickling operation.

§ 420.95 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40

CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) Sulfuric acid (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000526	0.000175
Zinc.....	0.000350	0.000117

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000189	0.0000563
Zinc.....	0.000113	0.0000375

(3) Strip, sheet, and plate.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000338	0.000113
Zinc.....	0.000225	0.0000751

(4) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000939	0.000313
Zinc.....	0.000626	0.000209

(5) Fume scrubber.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819

NOTE.—The above limitations are applicable to each fume scrubber associated with sulfuric acid pickling operations.

(b) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000920	0.000307
Zinc.....	0.000613	0.000204

(2) Strip, sheet, and plate.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.000526	0.000175
Zinc.....	0.000350	0.000117

(3) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.00182	0.000638
Zinc.....	0.00126	0.000426

(4) Fume scrubber.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead	0.0368	0.0123
Zinc	0.0245	0.00819

NOTE.—The above limitations shall be applicable for each fume scrubber associated with hydrochloric acid pickling operations.

(5) Acid regeneration.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead	0.245	0.0819
Zinc	0.163	0.0544

NOTE.—The above limitations shall be applicable to the absorber vent scrubber wastewater associated with hydrochloric acid regeneration plants.

(c) Combination acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00213	0.000652
Nickel	0.00192	0.000638

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000960	0.000384
Nickel	0.000864	0.000288

(3) Strip, sheet, and plate—continuous.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00626	0.00250
Nickel	0.00563	0.00188

(4) Strip, sheet, and plate—batch.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00192	0.000768
Nickel	0.00173	0.000576

(5) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.00322	0.00129
Nickel	0.00289	0.000964

(6) Fume scrubber.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Chromium	0.0819	0.0327
Nickel	0.0735	0.0245

NOTE.—The above limitations shall be applicable to each fume scrubber associated with a combination acid pickling operation.

§ 420.96 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must

comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) Sulfuric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, coil.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000939	0.0000313
Zinc	0.0000626	0.0000209

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000583	0.0000188
Zinc	0.0000376	0.0000125

(3) Strip, sheet, and plate.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000751	0.0000250
Zinc	0.0000501	0.0000167

(4) Pipe, tube, other products.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000131	0.0000438
Zinc	0.0000676	0.0000292

(5) Fume scrubber.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead	0.0368	0.0123
Zinc	0.0245	0.00819

(b) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, coil.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.000113	0.0000376
Zinc	0.0000751	0.0000250

(2) Strip, sheet, and plate.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.0000751	0.0000250
Zinc	0.0000501	0.0000167

(3) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead	0.000206	0.0000688
Zinc	0.000138	0.0000459

(4) Fume scrubber.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Lead	0.0368	0.0123
Zinc	0.0245	0.00819

NOTE.—The above limitations shall be applicable for each fume scrubber associated with hydrochloric acid pickling operations.

(c) Combination acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000292	0.000117
Nickel	0.000263	0.0000876

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000167	0.0000667
Nickel	0.000150	0.0000501

(3) Strip, sheet, and plate—continuous.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000710	0.000284
Nickel	0.000638	0.000213

(4) Strip, sheet, and plate—batch.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000250	0.000100
Nickel	0.000225	0.0000751

(5) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium	0.000418	0.000167
Nickel	0.000376	0.000125

(6) Fume scrubber.

SUBPART I

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
Chromium	0.0819	0.0327
Nickel	0.0735	0.0245

§ 420.97 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

(a) Sulfuric acid pickling (spent acid solutions and rinse waters)

(1) Rod, wire and coil.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0819	0.0350
O&G ¹	0.0350	0.0117
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Bar, billet and bloom.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0263	0.0113
O&G ¹	0.0113	0.00376
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Strip, sheet and plate.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0526	0.0225
O&G ¹	0.0225	0.00751
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.146	0.0626
O&G ¹	0.0626	0.0209
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a sulfuric acid pickling operation.

(b) Hydrochloric acid pickling (spent acid solutions and rinse waters).

(1) Rod, wire and coil.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.143	0.0613
O&G ¹	0.0613	0.0204
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Strip, sheet and plate.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0819	0.0350
O&G ¹	0.0350	0.0117
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Pipe, tube and other products.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.298	0.128
O&G ¹	0.128	0.0426
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a hydrochloric acid pickling operation.

(5) Acid regeneration.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	38.2	16.3
O&G ¹	16.3	5.45
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to the absorber vent scrubber wastewater associated with hydrochloric acid regeneration plants.

(c) Combination acid pickling (spent acid solution and rinse waters).

(1) Rod, wire, and coil.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.149	0.0638
O&G ¹	0.0638	0.0213
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Bar, billet, and bloom.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0672	0.0288
O&G ¹	0.0288	0.00960
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Strip, sheet, and plate—continuous.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.438	0.188
O&G ¹	0.188	0.0626
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Strip, sheet and plate—batch.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.134	0.0578
O&G ¹	0.0576	0.0192
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Pipe, tube, and other products.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.225	0.0964
O&G ¹	0.0964	0.0321
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

(6) Fume scrubbers.

SUBPART I

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kilograms per day		
TSS.....	5.72	2.45
O&G ¹	2.45	0.819
pH.....	(?)	(?)

¹The limitations for oil and grease shall be applicable when acid pickling wastewaters are treated with cold rolling wastewaters.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with a combination acid pickling operation.

Subpart J—Cold Forming Subcategory

§ 420.100 Applicability; description of the cold forming subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works from cold rolling and cold working pipe and tube operations in which unheated steel is passed through rolls or otherwise processed to reduce its thickness, to produce a smooth surface, or to develop controlled mechanical properties in the steel.

§ 420.101 Specialized definitions.

(a) The term "recirculation" means those cold rolling operations which include recirculation of rolling solutions at all mill stands.

(b) The term "combination" means those cold rolling operations which include recirculation of rolling solutions at one or more mill stands, and once-through use of rolling solutions at the remaining stand or stands.

(c) The term "direct application" means those cold rolling operations which include once-through use of rolling solutions at all mill stands.

(d) The term "single stand" means those recirculation or direct application cold rolling mills which include only one stand of work rolls.

(e) The term "multiple stands" means those recirculation or direct application cold rolling mills which include more than one stand of work rolls.

(f) The term "cold worked pipe and tube" means those cold forming operations that process unheated pipe and tube products using either water or oil solutions for cooling and lubrication.

§ 420.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Cold rolling mills.

(1) Recirculation—single stand.

SUBPART J

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.00125	0.000626
O&G.....	0.000522	0.000209
Chromium ¹	0.0000209	0.0000084
Lead.....	0.0000094	0.0000031
Nickel ¹	0.0000188	0.0000063
Zinc.....	0.0000063	0.0000021
Naphthalene.....	0.0000021	0.0000007
Tetrachloroethylene.....	0.0000031	0.0000011
pH.....	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Recirculation—multiple stands.

SUBPART J

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.00626	0.00313
O&G.....	0.00261	0.00104
Chromium ¹	0.000104	0.0000418
Lead.....	0.0000469	0.0000156
Nickel ¹	0.0000939	0.0000313

SUBPART J—Continued

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Zinc	0.0000313	0.0000104
Naphthalene	0.0000104	
Tetrachloroethylene	0.0000156	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Combination.

SUBPART J

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0751	0.0376
O&G	0.0313	0.0125
Chromium ¹	0.00125	0.000501
Lead	0.000583	0.000188
Nickel ¹	0.00113	0.000376
Zinc	0.000376	0.000125
Naphthalene	0.000125	
Tetrachloroethylene	0.000188	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Direct application—single stand.

SUBPART J

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0225	0.0113
O&G	0.00939	0.00376
Chromium ¹	0.000376	0.000150
Lead	0.000188	0.0000583
Nickel ¹	0.000338	0.000113
Zinc	0.000113	0.0000376
Naphthalene	0.0000376	
Tetrachloroethylene	0.0000583	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Direct application—multiple stands.

SUBPART J

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.100	0.0501
O&G	0.0417	0.0167
Chromium ¹	0.00167	0.000688
Lead	0.000751	0.000250
Nickel ¹	0.00150	0.000501
Zinc	0.000501	0.000167
Naphthalene	0.000167	
Tetrachloroethylene	0.000250	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(b) Cold worked pipe and tube.

(1) *Using water.* No discharge of process wastewater pollutants to navigable waters.

(2) *Using oil solutions.* No discharge of process wastewater pollutants to navigable waters.

§ 420.103 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Cold rolling mills.

(1) Recirculation—single stand.

SUBPART J

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.0000209	0.0000084
Lead	0.0000024	0.0000031
Nickel ¹	0.0000188	0.0000063
Zinc	0.0000063	0.0000021
Naphthalene	0.0000021	
Tetrachloroethylene	0.0000031	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(2) Recirculation—multiple stands.

SUBPART J

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.000104	0.0000418
Lead	0.0000469	0.0000156
Nickel ¹	0.0000939	0.0000313
Zinc	0.0000313	0.0000104
Naphthalene	0.0000104	
Tetrachloroethylene	0.0000156	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(3) Combination.

SUBPART J

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.00125	0.000501
Lead	0.000583	0.000188
Nickel ¹	0.00113	0.000376
Zinc	0.000376	0.000125
Naphthalene	0.000125	
Tetrachloroethylene	0.000188	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(4) Direct application—single stand.

Subpart J

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.000376	0.000150
Lead	0.000188	0.0000583
Nickel ¹	0.000338	0.000113
Zinc	0.000113	0.0000376
Naphthalene	0.0000376	
Tetrachloroethylene	0.0000583	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(5) Direct application—multiple stands.

SUBPART J

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.00167	0.000688
Lead	0.000751	0.000250
Nickel ¹	0.00150	0.000501
Zinc	0.000501	0.000167
Naphthalene	0.000167	
Tetrachloroethylene	0.000250	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(b) Cold worked pipe and tube.

(1) *Using water.* No discharge of process wastewater pollutants to navigable waters.

(2) *Using oil solutions.* No discharge of process wastewater pollutants to navigable waters.

§ 420.104 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) Cold rolling mills.

(1) Recirculation—single stand.

SUBPART J

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.00125	0.000626
O&G	0.000522	0.000209
Chromium ¹	0.0000209	0.0000084
Lead	0.0000094	0.0000031
Nickel ¹	0.0000188	0.0000063
Zinc	0.0000063	0.0000021
Naphthalene	0.0000021	
Tetrachloroethylene	0.0000031	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are cotreated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(2) Recirculation—multiple stands.

SUBPART J

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.00250	0.00125
O&G	0.00104	0.000417
Chromium ¹	0.0000418	0.0000167
Lead	0.0000188	0.0000063
Nickel ¹	0.0000376	0.0000125
Zinc	0.0000125	0.0000042
Naphthalene	0.0000042	
Tetrachloroethylene	0.0000063	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(3) Combination.

SUBPART J

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0326	0.0163
O&G	0.0136	0.00543
Chromium ¹	0.000543	0.000217
Lead	0.000244	0.0000814
Nickel ¹	0.000488	0.000163
Zinc	0.000163	0.0000542
Naphthalene	0.0000542	
Tetrachloroethylene	0.0000813	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(4) Direct application—single stand.

SUBPART J

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.00626	0.00313
O&G	0.00261	0.00104
Chromium ¹	0.000104	0.0000418
Lead	0.0000469	0.0000156
Nickel ¹	0.0000939	0.0000313
Zinc	0.0000313	0.0000104
Naphthalene	0.0000104	
Tetrachloro-ethylene	0.0000156	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(5) Direct application—multiple stands.

SUBPART J

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS	0.0726	0.0363
O&G	0.0302	0.0121
Chromium ¹	0.00121	0.000484
Lead	0.000545	0.000182
Nickel ¹	0.00109	0.000363
Zinc	0.000363	0.000121
Naphthalene	0.000121	
Tetrachloro-ethylene	0.000182	
pH	(?)	(?)

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

²Within the range of 6.0 to 9.0.

(b) Cold worked pipe and tube mills.

(1) *Using water.* No discharge of process wastewater pollutants to navigable waters.

(2) *Using oil solutions.* No discharge of process wastewater pollutants to navigable waters.

§ 420.105 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) Cold rolling.

(1) Recirculation—single stand.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.0000209	0.0000084
Lead	0.0000094	0.0000031
Nickel ¹	0.0000188	0.0000063
Zinc	0.0000063	0.0000021
Naphthalene	0.0000021	
Tetrachloroethylene	0.0000031	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(2) Recirculation—multiple stands.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.000104	0.0000418
Lead	0.0000489	0.0000156
Nickel ¹	0.0000939	0.0000313
Zinc	0.0000313	0.0000104
Naphthalene	0.0000104	0.00000156
Tetrachloroethylene	0.0000156	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(3) Combination.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.00125	0.000501
Lead	0.000563	0.000188
Nickel ¹	0.00113	0.000376
Zinc	0.000376	0.000125
Naphthalene	0.000125	
Tetrachloroethylene	0.000188	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(4) Direct application—single stand.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.000376	0.000150
Lead	0.000169	0.0000563
Nickel ¹	0.000338	0.000113
Zinc	0.000113	0.0000376
Naphthalene	0.0000376	
Tetrachloroethylene	0.0000563	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(5) Direct application—multiple stands.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.00167	0.000688
Lead	0.000751	0.000250
Nickel ¹	0.00150	0.000501
Zinc	0.000501	0.000167
Naphthalene	0.000167	
Tetrachloroethylene	0.000250	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(b) Cold worked pipe and tube mills.

(1) *Using water.* No discharge of process wastewater pollutants to publicly owned treatment works.

(2) *Using oil solutions.* No discharge of process wastewater pollutants to publicly owned treatment works.

§ 420.106 Pretreatment standards for new sources.

Except as provided in 40 CFR § 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources.

(a) Cold rolling.

(1) Recirculation—single stand.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.0000209	0.0000084
Lead	0.0000094	0.0000031
Nickel ¹	0.0000188	0.0000063
Zinc	0.0000063	0.0000021
Naphthalene	0.0000021	
Tetrachloroethylene	0.0000031	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(2) Recirculation—multiple stands.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.0000418	0.0000167
Lead	0.0000188	0.0000063
Nickel ¹	0.0000376	0.0000125
Zinc	0.0000125	0.0000042
Naphthalene	0.0000042	
Tetrachloroethylene	0.0000063	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(3) Combination.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.000543	0.000217
Lead	0.000244	0.0000814
Nickel ¹	0.000488	0.000163
Zinc	0.000163	0.0000542
Naphthalene	0.0000542	
Tetrachloroethylene	0.0000813	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(4) Direct application—single stand.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Chromium ¹	0.000104	0.0000418
Lead	0.0000469	0.0000158
Nickel ¹	0.0000939	0.0000313
Zinc	0.0000313	0.0000104
Naphthalene	0.0000104	
Tetrachloroethylene	0.0000156	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(5) Direct application—multiple stands.

SUBPART J

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Chromium ¹	0.00121	0.000484
Lead	0.000545	0.000182
Nickel ¹	0.00109	0.000363
Zinc	0.000363	0.000121
Naphthalene	0.000121	
Tetrachloroethylene	0.000182	

¹The limitations for chromium and nickel shall be applicable in lieu of those for lead and zinc when cold rolling wastewaters are treated with descaling or combination acid pickling wastewaters.

(b) Cold worked pipe and tube mills.

(1) *Using water.* No discharge of process wastewater pollutants to publicly owned treatment works.

(2) *Using oil solutions.* No discharge of process wastewater pollutants to publicly owned treatment works.

§ 420.107 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

(a) Cold rolling mills.

(1) Recirculation—single stand.

SUBPART J

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS	0.00125	0.000626
O&G	0.000522	0.000209
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(2) Recirculation—multiple stands.

SUBPART J

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS	0.00626	0.00313
O&G	0.00261	0.00104

SUBPART J—Continued

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(3) Combination.

SUBPART J

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS	0.0751	0.0376
O&G	0.0313	0.0125
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(4) Direct application—single stand.

SUBPART J

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS	0.0225	0.0113
O&G	0.00939	0.00376
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(5) Direct application—multiple stands.

SUBPART J

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS	0.100	0.0501
O&G	0.0417	0.0167
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) Cold worked pipe and tube.

(1) *Using water.* No discharge of process wastewater pollutants to navigable waters.

(2) *Using oil solutions.* No discharge of process wastewater pollutants to navigable waters.

Subpart K—Alkaline Cleaning Subcategory

§ 420.110 Applicability; description of the alkaline cleaning subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from operations in which steel and steel products are immersed in alkaline cleaning baths to remove mineral and animal fats or oils from the steel, and those rinsing operations which follow such immersion.

§ 420.111 Specialized definitions.

(a) The term "batch" means those alkaline cleaning operations which process steel products such as coiled wire, rods, and tubes in discrete batches or bundles.

(b) The term "continuous" means those alkaline cleaning operations which process steel products other than in discrete batches or bundles.

§ 420.112 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Batch.

SUBPART K

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS	0.0730	0.0313
O&G	0.0313	0.0104
pH	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) Continuous.

SUBPART K

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of products	
TSS	0.102	0.0438
O&G	0.0438	0.0146

SUBPART K—Continued

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.113 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The Agency has determined that there are not significant quantities of toxic pollutants in alkaline cleaning wastewaters after compliance with applicable BPT limitations. Accordingly, since the BPT level of treatment provides adequate control, the Agency is not promulgating more stringent BAT limitations.

§ 420.114 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) Batch and continuous.

SUBPART K

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0146	0.00626
O&G.....	0.00626	0.00209
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

§ 420.115 Pretreatment standards for existing sources.

Any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 420.116 Pretreatment standards for new sources.

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

§ 420.117 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the

degree of effluent reduction attainable by the application of the best conventional technology.

(a) Batch.

SUBPART K

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0730	0.0313
O&G.....	0.0313	0.0104
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

(b) Continuous.

SUBPART K

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.102	0.0438
O&G.....	0.0438	0.0146
pH.....	(¹)	(¹)

¹ Within the range of 6.0 to 9.0.

Subpart L—Hot Coating Subcategory

§ 420.120 Applicability; description of the hot coating subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from the operations in which steel is coated with zinc, terne metal, or other metals by the hot dip process, and those rinsing operations associated with that process.

§ 420.121 Specialized definitions.

(a) The term "galvanizing" means coating steel products with zinc by the hot dip process including the immersion of the steel product in a molten bath of zinc metal, and the related operations preceding and subsequent to the immersion phase.

(b) The term "terne coating" means coating steel products with terne metal by the hot dip process including the immersion of the steel product in a molten bath of lead and tin metals, and the related operations preceding and subsequent to the immersion phase.

(c) The term "other coatings" means coating steel products with metals other than zinc or terne metal by the hot dip process including the immersion of the steel product in a molten bath of metal,

and the related operations preceding the subsequent to the immersion phase.

(d) The term "fume scrubber" means wet air pollution control devices used to remove and clean fumes originating from hot coating operations.

(e) The term "strip, sheet, and miscellaneous products" means steel products other than wire products and fasteners.

(f) The term "wire products and fasteners" means steel wire, products manufactured from steel wire, and steel fasteners manufactured from steel wire or other steel shapes.

§ 420.122 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Galvanizing, terne coating, and other coatings.

(1) Strip, sheet, and miscellaneous products.

SUBPART L

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.175	0.0751
O&G.....	0.0751	0.0250
Lead.....	0.00113	0.000376
Zinc.....	0.000751	0.000250
Chromium (hexavalent) ¹	0.000150	0.0000501
pH.....	(²)	(²)

¹ The limitations for hexavalent chromium shall apply only to galvanizing operations which discharge wastewaters from the chromate rinse step.

² Within the range of 6.0 to 9.0.

(b) Galvanizing and other coatings.

(1) Wire products and fasteners.

SUBPART L

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.701	0.300
O&G.....	0.300	0.100
Lead.....	0.00451	0.00150
Zinc.....	0.00300	0.00100
Chromium (hexavalent) ¹	0.000600	0.000200
pH.....	(²)	(²)

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

²Within the range of 6.0 to 9.0.

(c) Fume scrubbers.

SUBPART L

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg per day		
TSS.....	38.1	16.3
O&G.....	16.3	5.45
Lead.....	0.245	0.0819
Zinc.....	0.163	0.0545
Chromium (hexavalent) ¹	0.0327	0.0109
pH.....	(²)	(²)

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with any of the coating operations specified above.

§ 420.123 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) Galvanizing, terne coating and other coatings.

(1) Strip, sheet, and miscellaneous products scrubbers.

SUBPART L

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.00113	0.000376
Zinc.....	0.000751	0.000250
Chromium (hexavalent) ¹	0.000150	0.0000501

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewater from the chromate rinse step.

(b) Galvanizing and other coatings.

(1) Wire products and fasteners.

SUBPART L

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
Lead.....	0.00451	0.00150
Zinc.....	0.00300	0.00100
Chromium (hexavalent) ¹	0.000601	0.000200

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

(c) Fume scrubbers.

SUBPART L

Pollutant or pollutant property	BAT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg per day		
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
Chromium (hexavalent) ¹	0.00490	0.00163

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

The above limitations shall be applicable to each fume scrubber associated with any of the coating operations specified above.

§ 420.124 New source performance standards.

The discharge of wastewater pollutants from any new source subject to this subpart shall not exceed the standards set forth below.

(a) Galvanizing, terne coating and other coatings.

(1) Strip, sheet, and miscellaneous products.

SUBPART L

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.0438	0.0188
O&G.....	0.0188	0.00626
Lead.....	0.000282	0.0000939
Zinc.....	0.000188	0.0000626
Chromium (hexavalent) ¹	0.0000376	0.0000125
pH.....	(²)	(²)

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

²Within the range of 6.0 to 9.0.

(b) Galvanizing and other coatings.

(1) Wire products and fasteners.

SUBPART L

Pollutant or pollutant property	New source performance standards	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
Kg/kg (pounds per 1,000 lb) of product		
TSS.....	0.175	0.0751
O&G.....	0.0751	0.0250
Lead.....	0.00113	0.000376
Zinc.....	0.000751	0.000250
Chromium (hexavalent) ¹	0.000150	0.0000501
pH.....	(²)	(²)

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

²Within the range of 6.0 to 9.0.

(c) Fume scrubbers.

SUBPART L

New source performance standards	Pollutant or pollutant property	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
kg/per day		
TSS.....	5.72	2.45
O&G.....	2.45	0.819
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
Chromium (hexavalent) ¹	0.00490	0.00163
pH.....	(²)	(²)

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

²Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with any of the coating operations specified above.

§ 420.125 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources.

(a) Galvanizing, terne coating and other coatings.

(1) Strip, sheet, and miscellaneous products.

SUBPART L

Pretreatment standards for existing sources	Pollutant or pollutant property	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.00113	0.000376
Zinc.....	0.000751	0.000250
Chromium (hexavalent) ¹	0.000150	0.0000501

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

(b) Galvanizing and other coatings.

(1) Wire products and fasteners.

SUBPART L

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.00451	0.00150
Zinc.....	0.00300	0.00100
Chromium (hexavalent) ¹	0.000601	0.000200

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

(c) Fume scrubbers.

SUBPART L

Pollutant or pollutant property	Pretreatment standards for existing sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg per day	
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
Chromium (hexavalent) ¹	0.00490	0.00163

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

The above limitations shall be applicable to each fume scrubber associated with any of the coating operations specified above.

§ 420.126 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources:

(a) Galvanizing, terne coatings and other coatings.

(1) Strip, sheet, and miscellaneous products.

SUBPART L

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.000282	0.0000939
Zinc.....	0.000188	0.0000626
Chromium (hexavalent) ¹	0.0000376	0.0000125

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

(b) Galvanizing and other coatings.

(1) Wire products and fasteners.

SUBPART L

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
Lead.....	0.00113	0.000376
Zinc.....	0.000751	0.000250
Chromium (hexavalent) ¹	0.000150	0.0000501

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

(c) Fume scrubbers.

SUBPART L

Pollutant or pollutant property	Pretreatment standards for new sources	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kilograms per day	
Lead.....	0.0368	0.0123
Zinc.....	0.0245	0.00819
Chromium (Hexavalent) ¹	0.00490	0.00163

¹The limitations for hexavalent chromium shall be applicable only to galvanizing operations which discharge wastewaters from the chromate rinse step.

The above limitations shall be applicable to each fume scrubber associated with any of the coating operations specified above.

§ 420.127 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

Except as provided in 40 CFR 125.30-32, any existing point source subject to this subpart must achieve the following

effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional technology.

(a) Galvanizing, terne coating, and other coatings.

(1) Strip, sheet, and miscellaneous products.

SUBPART L

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.175	0.0751
O&G.....	0.0751	0.0250
pH.....	(¹)	(¹)

¹Within the range of 6.0 to 9.0.

(b) Galvanizing and other coatings.

(1) Wire products and fasteners.

SUBPART L

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kg (pounds per 1,000 lb) of product	
TSS.....	0.701	0.300
O&G.....	0.300	0.100
pH.....	(¹)	(¹)

¹Within the range of 6.0 to 9.0.

(c) Fume scrubbers.

SUBPART L

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kilograms per day	
TSS.....	38.1	16.3
O&G.....	16.3	5.45
pH.....	(¹)	(¹)

¹Within the range of 6.0 to 9.0.

The above limitations shall be applicable to each fume scrubber associated with any of the coating operations specified above.

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**Thursday
May 27, 1982**

Part III

Department of Justice

Antitrust Division

**United States of America v. Western
Electric Company, Inc., et al., Civil Action
No. 82-0192 (D.D.C.) and United States
of America v. American Telephone &
Telegraph Company, et al., Civil Action
No. 74-1698 (D.D.C.); Response to Public
Comments on Proposed Modification of
Final Judgment**

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Western Electric Company, Inc., et al., Civil Action No. 82-0192 (D.D.C.) and United States of America v. American Telephone & Telegraph Company, et al., Civil Action No. 74-1698 (D.D.C.); Response to Public Comments on Proposed Modification of Final Judgment

Notice is hereby given that, pursuant to an order of the United States District Court for the District of Columbia dated January 21, 1982, in Civil Actions No. 74-1698 and 82-0192, as modified by orders of the same Court dated February 5 and May 5, 1982, the Response of the United States to comments received from the public in connection with the proposed Modification of Final Judgment in *United States v. Western Electric Company, Inc.* was filed with the Court on May 20, 1982.

The proposed Modification of Final Judgment was filed with the Court on January 8, 1982, and was published in the *Federal Register* on January 28, 1982 (Vol. 47, No. 19, Pp. 4166-4170). Pursuant to the Court's order of January 21, 1982, a Competitive Impact Statement was filed by the United States on February 10, 1982, and published in the *Federal Register* on February 17, 1982 (Vol. 47, No. 32, Pp. 7170-7184). During the sixty-day period established by the Court for the submission by the public of comments concerning the proposed modification, the United States received a substantial number of such comments. On May 17, 1982, the United States published in the *Federal Register* an announcement concerning procedures to be followed in making available to the public the comments received, together with a list of the names and addresses of the persons who submitted comments (Vol. 47, No. 95, Pp. 21214-21224). The Response of the United States to those comments is set forth in full below.

Persons desiring copies of the Response should direct their requests to: Mr. Eric Donovan, Antitrust Division, Room 1028 SAFE, U.S. Department of Justice, Washington, D.C. 20530, (202) 724-5790.

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Telephone & Telegraph Company; Western Electric Company,

Inc. and Bell Telephone Laboratories, Inc., Defendants; Civil Action No. 74-1698.

United States of America, Plaintiff, v. Western Electric Company, Inc., and American Telephone & Telegraph Company, Defendants; Civil Action No. 82-0192.

Response of the United States to Public Comments on Proposed Modification of Final Judgment

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United States District Court for the District of Columbia

United States of America, Plaintiff, v. American Telephone & Telegraph Company; Western Electric Company, Inc.; and Bell Telephone Laboratories, Inc., Defendants; Civil Action No. 74-1698.

United States of America, Plaintiff, v. Western Electric Company, Inc., and American Telephone & Telegraph Company, Defendants; Civil Action No. 82-0192.

RESPONSE OF THE UNITED STATES TO PUBLIC COMMENTS ON PROPOSED MODIFICATION OF FINAL JUDGMENT

Pursuant to this Court's order of January 21, 1982, plaintiff, the United States of America, hereby files its response to comments received from the public on the proposed Modification of Final Judgment in this civil antitrust action.

Introduction

On January 8, 1982, the United States and the American Telephone and Telegraph Company ("AT&T") filed in the United States District Court for the District of New Jersey an agreed-upon modification of the Final Judgment entered in *United States v. Western Electric Company, Inc., et al.*, Civil Action No. 17-49 ("the Western Electric case").¹ The proposed modification would vacate the 1956 Judgment in its entirety and substitute various structural and injunctive provisions. Simultaneously, the parties filed in the District Court for the District of Columbia a Stipulation for Voluntary Dismissal of *United States v. American Telephone and Telegraph Company, et al.*, Civil Action No. 74-1698 ("the AT&T case").

By order of January 21, 1982, this Court, at the suggestion of the parties, directed that procedures identical to those called for by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) et seq. ("the Tunney Act"), be followed in connection with the modification. To date, the parties have complied with the procedures of the Tunney Act as set forth in the Order of January 21, 1982,² as follows:

¹On January 14, 1982, the New Jersey District Court transferred *United States v. Western Electric*, docketed there under C.A. No. 17-49, to the United States District Court for the District of Columbia, where it was docketed under C.A. No. 82-0192.

²As modified by orders of this Court of February 5, 1982, and May 5, 1982.

1. The proposed Modification of Final Judgment and the Stipulation for Voluntary Dismissal were published by the United States in the *Federal Register* on January 28, 1982 (Vol. 47, No. 19, pp. 4166-4170).

2. On February 5, 1982, AT&T filed with this Court a description of any and all written or oral communications by or on its behalf with any officer or employee of the United States concerning or relevant to the proposal, and certified it as a complete and true description of such communications known to AT&T or which it should reasonably have known.

3. A Competitive Impact Statement was filed by the United States on February 10, 1982, and published in the *Federal Register* on February 17, 1982 (Vol. 47, No. 32, pp. 7170-7184).

4. Beginning February 19, 1982, the United States made available at the twenty-six district courts specified in the Order of January 21, 1982, copies of the proposed Modification of Final Judgment. There were no other materials and documents which the United States considered determinative in formulating the proposal.

5. A summary of the terms of the proposed Modification of Final Judgment and Competitive Impact Statement, and directions for the submission to the United States of written comments relating to the proposal, were published in newspapers of general circulation in the twenty-six districts specified in this Court's January 21 Order for seven days over a period of two weeks in February, 1982.

6. The sixty-day period for submission of written comments relating to the proposal commenced on February 19, 1982 and terminated on April 20, 1982.³

7. The written comments submitted were filed with this Court by the United States on April 21, April 23, April 27, and May 4, 1982.

8. A press release was issued by the United States on May 10, 1982, and published in the *Federal Register* on May 17, 1982 (Vol. 47, No. 95, pp. 21214-21224), describing the procedures to be used in lieu of *Federal Register* publication of all written comments, as set forth in this Court's order of May 5, 1982.

9. The name and address of each person filing a written comment, with a statement of the number of pages in the comment, was published by the United States in the *Federal Register* on May 17, 1982 (Vol. 47, No. 95, pp. 21214-21224).

10. On May 20, 1982, the United States made available for inspection by the public at each of the twenty-six district courts listed in the Court's January 21 order a copy of each comment received.

Legal Standards Governing the Court's Public Interest Determination

Because these proceedings are being conducted under procedures identical to those specified in the Tunney Act, the Department sets out, in the following discussion, what it believes are the legal standards that govern public interest determinations under that Act. Because this proceeding concerns the substitution of a new consent judgment for an existing consent judgment, the Department believes that the standards generally governing consent judgments apply in this case.

The courts have clearly established that the Department of Justice has broad discretion in controlling government antitrust litigation, including negotiating and agreeing to consent decrees and determining whether such settlements are in the public interest. See *Sam Fox Publishing v. United States*, 366 U.S. 683, 689 (1961); *Swift & Co. v. United States*, 276 U.S. 311, 331-32 (1928). The Tunney Act reaffirms the long-standing equitable rule that the Court is to provide an independent "check upon the government's good faith and expertise" by conducting procedures to help it determine whether the negotiated decree is in the public interest. *United States v. Morgan Drive Away, Inc.*, 1976-1 Trade Cases ¶50,949 at 69, 161 (D.D.C. 1976). The Tunney Act suggests a number of factors that a court may consider in making its determination. 15 U.S.C. § 16(e) (1) and (2). In general, the Court should test the proposed decree by determining "Whether the relief provided * * * is adequate to remedy the allegations of antitrust violation as set out in the complaint". *United States v. Bechtel*, 1979-1 Trade Cases ¶62,430 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660 (9th Cir. 1981), *cert. denied*, 102 S.Ct. 638

³Prior to the passage of the Tunney Act in 1974, it was already clear that entry of a "consent decree is a judicial act * * * and, therefore involves a determination by the chancellor that it is equitable and in the public interest." *United States v. Radio Corp. of America*, 46 F. Supp. 654, 655 (D. Del. 1942), *appeal dismissed*, 313 U.S. 796 (1943); *United States v. Carter Products, Inc.*, 211 F. Supp. 144, 147-48 (S.D.N.Y. 1982). The Tunney Act formalized this process but did not change the pre-existing standards for determining whether entry of an antitrust decree is in the public interest. *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cases ¶61,508 at 71979 (W.D. Mo. 1977). As the House Report states, the Tunney Act is "unambiguous" in adopting prior law as to the standards for judicial review of a consent decree. H.R. Rep. No. 1463, 93rd Cong., 2d Sess. 11-12 (1974) (U.S. Code Cong. and Admin. News 1974, 93rd Cong., 2d Sess., p. 6542.)

(1982). Thus, one highly significant factor is the degree to which the proposed decree advances and is consistent with the government's prayer for relief. *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1144 (C.D. Cal. 1978); *United States v. Carroll Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

At the same time, the Court must recognize that the consent decree process normally entails compromise, and that the parties each give up something which they might otherwise have won. *United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cases, ¶61,508 at 71,980 (W.D. Mo. 1977); *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). As explained in *United States v. Gillette*, 406 F. Supp. 713, 716 (D. Mass. 1975).

It is not the court's duty to determine whether this is the best possible settlement that could have been obtained if, say, the government had bargained a little harder. The Court is not settling the case. It is determining whether the settlement achieved is within the reaches of the public interest.

As the *Gillette* court observed, while the reviewing court should not act *pro forma*, "too much tillage can destroy the garden" by decreasing the utility of consent decrees as a means for resolving antitrust cases. 406 F. Supp. at 715. Thus, while a court should consider the degree to which a proposed consent decree comports with the relief sought by the government in making the public interest determination, its role is considerably more limited than the role of a court in formulating relief following trial.

A number of commenting parties seemed to assume, and others suggested, that the Court may make changes to the proposed modification without the consent of the parties. The Department strongly disagrees with these suggestions. The proposed modification is an agreed compromise between the parties. As the court in *United States v. AMPI*, 394 F. Supp. 29, 42 (W.D. Mo. 1975), stated in construing the recently-enacted Tunney Act:

If the Congress wants the judicial branch to have more power than that implicit in the threat of total rejection of a proposed decree, such power must be authorized by legislation which is considerably broader in scope than that vested by the newly enacted Antitrust Procedures and Penalties Act or by existing law.

The responsibility of the Court, therefore, is not to determine whether the modification might be improved, as suggested in some comments, but rather whether, as submitted to the Court for

³The United States has treated as timely filed all comments received between February 11 and April 23, 1982.

its consideration, it is "within the reaches of the public interest."

The Proposed Modification of Final Judgment

The proposed modification before the Court disposes of controversies between the United States and AT&T beginning with the *Western Electric* case filed in 1949 and continuing with the filing of the AT&T case in 1974. As set out in the Department's Competitive Impact Statement, the basic theory of both cases was that, as a rate base/rate of return regulated monopolist, AT&T has had both the incentive and ability, through cross-subsidization and discriminatory practices, to leverage the power it enjoys in its regulated monopoly markets to foreclose and impede the development of competition in related, potentially competitive markets.

The proposed modification, through the central mechanism of divestiture of AT&T's regulated local franchise monopolies, eliminates the anticompetitive incentives and abilities which were the focus of both the *Western Electric* and AT&T cases. It does so by separating the provision of competitive or potentially competitive products and services from those services which, under current technological and regulatory conditions, exhibit monopoly bottleneck characteristics. As a necessary complement to this separation, the modification prohibits the reintegration of regulated monopoly services into competitive or potentially competitive markets and, therefore, prevents the reemergence of the very conditions that gave rise to the *Western Electric* and AT&T cases.

The modification is not intended to nor can it, deal with every conceivable anticompetitive problem that might arise in the telecommunications industry. Rather, it focuses on and deals effectively with those anticompetitive means and incentives out of which the *Western Electric* and AT&T cases arose. Indeed, the modification, in its essentials, would provide precisely the relief sought by the United States in the 1974 AT&T case. It thus establishes an industry structure that will eradicate the potential for anticompetitive behavior made possible by the integration of regulated monopoly and competitive products and services.

The Department of Justice received over 600 comments on the proposed modification, totalling over 8,500 pages. The comments raised a variety of issues relating to such matters as the role of the states and other interested parties in the procedures leading to

implementation of the plan of reorganization, the effects of the modification's restrictions on BOC viability and local rates, the adequacy of the modification's provisions in dealing with various competitive, employee and investor interests, and the interests of private plaintiffs. The Department also received a submission from the Department of Defense setting out that agency's concerns that the modification's provisions be implemented in a manner that will maximize the responsiveness of the industry to national security and emergency preparedness interests. Because the Department of Defense is a part of the plaintiff, the Department will not address the issues raised in its comments in this Response. The Department of Justice will however, work closely with the Department of Defense to ensure that its concerns are fully taken into account in the implementation of the modification's various provisions.⁵

I. Role of Interested Parties in the Implementation of the Proposed Modification

The Department received a very large number of comments which expressed concern regarding the procedures to be used in implementing the divestiture required by the proposed modification and the role of interested parties in the implementation process. In the following discussion, the Department addresses these concerns.

A. Implementation of Divestiture

The proposed modification sets out a sequence of events that will result in full divestiture. These events break down into two phases: those concerned with the entry of the proposed modification mandating divestiture, and those concerned with the implementation of the divestiture.

Over eighty comments addressed the procedures to be followed in both assessing and implementing the proposed modification. Many of the comments were concerned with the roles to be played by the Court and the parties. These comments generally suggested that the Court should assert close and continuing supervision over the parties during the evolution and execution of the plan of implementation. They also asserted that the parties' plans and actions for reorganization should be subject to Court approval

after public comment. Other comments addressed the role in the reorganization process of federal and state regulators, ranging from suggestions that there be some mechanism for ascertaining the views of the regulators, or that the regulators be given a formalized role in the proceedings, to assertions that functions apportioned by the modification to the parties or the Court should be performed solely by regulators.

Finally, a number of the comments were concerned that the public be informed of developments at each stage of the proceedings and have an opportunity to comment. Recommendations ranged from the suggestion that there be some opportunity for public comment at critical stages to the assertion that full Tunney Act procedures should apply at each point.

A majority of the comments raising procedural objections to the proposed modification were based on the view that no distinction can or should be made between the entry of the proposed modification mandating divestiture and its implementation accomplishing that objective. Some comments argued generally that whether the public interest will be served by the proposed divestiture simply cannot be assessed until the divestiture plan, in all of its details, is known. Other comments pointed more specifically to possibilities that particular aspects of the plan—for example, the allocation of debt between AT&T and the local exchange companies—could have adverse consequences to particular concerns. They expressed fears that, once the Court has approved the modification, there would be no opportunity either to voice their concerns, or to seek appropriate relief if their concerns went unheard. The comments suggested a variety of means to overcome these perceived difficulties. Some proposed that the Court withhold approval pending completion of the plan of implementation; others suggested that the Court grant only "conditional" or "interim" approval now, and final approval after the detailed plan is reviewed. Still others proposed that the Court reject the modification now with leave to refile after the details are known, or that court approval be withheld and the detailed plan inserted into the modification itself.

The Department believes that the fears on which these suggestions are based, both as generally expressed and as to points of specific concern, are unfounded. The proposed modification now before the Court is not merely an

⁵ The Department also received a submission from the Small Business Administration, also an Executive Branch agency and also a part of the plaintiff. The Department will also consult with that agency regarding concerns expressed in the submission.

"agreement to agree" or an empty ceremonial proclamation. Rather, it both mandates a fundamental divestiture within the Bell System, and sets forth the principles that are to govern the separation of facilities and functions among the divested parts of the enterprise. The divestiture will separate local exchange functions, which, in today's technology, by and large have monopoly characteristics and are to be provided by the local operating companies, from those that technology has opened to competition, which will be provided by AT&T. This separation will remove the incentives and abilities that have existed within the Bell System to subsidize competitive activities with supracompetitive earnings from monopoly activities.

The Court is being asked now to find that the divestiture proposed and described in the modification is in the public interest, and enter the modification as its order. Contrary to the suggestion of some comments, the modification plainly sets forth the principles that are to govern the separation of ownership and complementary injunctive provisions. Indeed, the modification itself provides substantial detail as to the line of separation and the intended operation of the various injunctive provisions; further detail has been provided in the Competitive Impact Statement and in the sections of this Response that follow. Accordingly, the Department believes it is not only possible, but altogether appropriate for the Court to determine now whether the contemplated divestiture is or is not "in the public interest," the standard that governs any consent decree proceeding. Of course, following entry of the modification, the Court will have complete jurisdiction to ensure that it is implemented in a manner consistent with its provisions and objectives.

It is possible that the implementation plan will raise concerns that, although incidental to the basic divestiture proposal, may have significant consequences to various interests. Particular concern has been raised, for example, about the allocation of debt and about contracts for jointly used facilities, because of the potentially adverse impact of these arrangements on the financial soundness of the local operating companies and the possible consequences for ratepayers. To a substantial extent, the specific content of such concerns has been anticipated in the various comments. The Department addresses these concerns in succeeding sections of this Response. As those sections explain, the Department

believes that some of the anticipated problems, particularly with respect to valuation of assets for debt allocation and, in some comments' contention, for reimbursement of ratepayers, derive from fundamental misconceptions about the nature of the proposed divestiture and its effects on on-going regulatory responsibilities. But in many other respects, the Department recognizes that the implementation plan will involve matters of legitimate concern. The succeeding sections explain in detail the standards by which the Department proposes to ensure that such legitimate concerns are addressed. On all of these matters of substantive concern, the Department believes that the Court can and will take the Department's approach, detailed here, fully into account in judging whether the modification will serve the public interest.

Some of the comments, however, express doubt, not as to whether the standards the Department proposes to apply are sound, but as to whether it will have the information necessary to apply them, *i.e.*, to ascertain precisely what the problems are, to assess their severity, and to develop appropriate solutions. The Department believes that the procedures it proposes to employ in assessing the implementation plan are fully adequate to the task. For a period of sixty days after the final implementation plan is submitted, the Department will remain open to formal or informal comments from anyone who wishes to address any of the details set forth in the plan. The Department welcomes all input, recognizing that the broader the spectrum of opinion it receives, the better equipped it will be to discharge its obligations in the implementation of the divestiture. The Department has previously stated in the Competitive Impact Statement, and now reaffirms, its intention to work closely with knowledgeable and interested parties (including state and federal regulators) during the period before the last of the details are available. Indeed, the Department is already exploring with the FCC a regular working relationship, and would welcome suggestions from the state authorities as to a means of regularizing a similar consultative relationship. In deciding whether to approve or disapprove the plan, the Department will take into account the comments it has received, as well as the results of its own investigations. The Department thus will not be reviewing a secret plan in a vacuum, but rather will be reviewing a

public plan with the benefits of input from all interested persons.⁶

The National Association of Regulatory Utility Commissioners (NARUC), and some state regulators individually, were concerned that the procedures set forth in the proposed modification do not adequately protect the interests of the local operating companies and their ratepayers in the valuation and division of assets. The point is made that, however well intended the Department may be, as a practical matter it might be forced to rely primarily on technical information supplied by AT&T itself, without access to information from sources that have the interests of the local exchange companies, their ratepayers and, indeed, their regulators, predominantly or exclusively in mind. While several different suggestions were made to remedy these perceived problems, common to them all is the felt need for direct representation of BOC interests. One suggestion was that the Court appoint guardians *ad litem* to represent the BOCs. Another was that the local companies be divested intact as the first step, and then negotiate asset valuation and transfer with AT&T. Other comments advocated a transfer of assets and valuation by the state regulators prior to the actual divestiture.

These suggestions pose, in the Department's view, enormous practical and procedural problems. Under the terms of the modification, AT&T's divestiture plan will be completed and made public six months after entry of the Court's order. After a sixty-day public comment period, the Department will be able to pass on the plan well within the time necessary for the divestiture to occur, as scheduled, eighteen months after the modification is entered as a Court order. The procedures thus assure that the modification's competitive objectives will be achieved as soon as possible, with minimum disruption of the firms' continuing operations. The suggested alternatives, in contrast, would inevitably delay the process. Indeed, one of the proposed alternatives—that the BOCs be divested intact, with subsequent buy-back of assets by

⁶It is important to note that while the Department and, ultimately, the Court have authority as to the implementation plan, the FCC has on-going jurisdiction over the regulated activities of AT&T and the BOCs. Where elements of the plan entail exercise of that jurisdiction, FCC proceedings offer a further opportunity for public participation concerning regulated activities related to plan implementation.

AT&T—would be likely to delay achievement of divestiture indefinitely.⁷

To the extent that these proposals are directed to assuring full consideration of BOC interests,⁸ they are, in the Department's view, as unnecessary as they are unwise. Steps have been taken to ensure that, in assessing the reorganization plan, the Department will have full access to information from sources both knowledgeable in the affairs of the BOCs and loyal to their interests and the interests of the ratepayers they serve. On May 19, AT&T announced the appointment of the chief executive officers of the 7 regional companies that will own the 22 divested BOCs. These executives will direct and coordinate planning which must be accomplished prior to implementation of the modification. These executives, and the staffs they develop, will represent their local companies in dealing with the Department. As the comments in this area all agree, such officers will be in the best position to assess the effects the reorganization will have on their companies.⁹

The recently-appointed officers will have complete independence of AT&T in formulating and representing their views to the Department, and will have every incentive to represent the interests of the local companies. Because they will be responsible for the viability of the local companies after divestiture, it will

be in their interest to ensure that the detailed plan maximizes that viability. Moreover, after divestiture, the details of asset valuation and assignment will be reviewed by state regulators, either directly or in the course of rate hearings for the post-divestiture operating companies. Assets which were incorrectly assigned or valued could be disallowed from the operating companies' rate bases. Because the regional officers will have to live with the consequences of the asset valuation and assignment, they will also have to be sure it is done correctly.

The Department accordingly believes that the substantive standards by which it will judge the reorganization plan, and the procedures by which it will apply them, assure that the objectives of the modification will be achieved, and allow the Court to determine now that the modification is in the public interest. Some comments argued, however, that, even though the standards and procedures for implementation may seem clear and appropriate, the Department would have, in effect, unfettered discretion to ignore them once the modification is adopted; that concerns, although voiced, would go unheard, and those who had voiced them would be left without remedy. These fears have resulted in numerous suggestions that boil down to two central themes. One is that the Court should not enter the proposed modification until the finalized details of the plan have been made public, with appropriate opportunity for comment. The other is that the Court, not the Department, should have the right to review and approve the details of the divestiture and its implementation.

The Department believes that these fears and the suggestions that flow from them misapprehend both the intention of the parties and the authority of the Court—authority that the parties could not have affected even had they tried. While the proposed modification is now only an agreement between the parties, once entered it becomes an order of the Court. The Court will then have the authority to ensure that any actions taken are consistent with the order, and the attendant powers to hold hearings, appoint experts and seek assistance by appropriate means from interested parties. The Department is confident that many of the fears now voiced regarding the implementation plan will prove groundless if the procedures and the standards it proposes to apply are allowed to work. If issues remain, the parties fully expect that the Court will exercise, as appropriate, the authority it undoubtedly has to interpret and

enforce the modification, and to assure that the Department adheres to the principles and procedures undertaken to govern its implementation.

B. The Role of the FCC and the State Regulatory Agencies

The *amicus* submission of the FCC and the comments of numerous state agencies, officials and private parties observe that the implementation of the modification necessarily concerns those charged with regulation of telecommunications. They urge that the federal and state regulatory authorities be allowed to participate actively in the Department's consideration of the implementation plan. As pointed out above, the Department intends to afford all interested parties the fullest possible notice of the details of the implementation plan as soon as they become available. The Department expects and welcomes elucidation of affected interests from all sources, most particularly from the FCC and state regulators. The Department believes that this process of full notice and consultation will reduce and possibly remove the potential that aspects of the plan will adversely affect the achievement of legitimate regulatory objectives. Indeed, although some states have suggested that they have and will exercise a power to countermand the obligations imposed by the modification—a notion addressed at length in the following section—the consultation process will, we believe, reduce and perhaps eliminate the likelihood that state regulatory agencies will find it appropriate to attempt to do so.

1. *The FCC Proceedings:* The FCC has stated that the core of the proposed modification, including divestiture of AT&T's local exchange operations, is reasonable and will produce significant competitive benefits. The Commission foresees that it will assess the "collateral effects" of the plan of reorganization in a unified proceeding (the "214 proceeding"). That proceeding would consolidate consideration of all applications by AT&T under the Communications Act for approval of asset transfers and other activities that normally require FCC approval.¹⁰ In making the regulatory determinations that may be occasioned by implementation, the FCC stated that it

⁷ The proposal presumably does not envision negotiations of the normal sort, in which both the buyer and seller can, if they believe the terms unacceptable, refuse the bargain, and resort to alternatives. Instead, apparently what is contemplated is that the BOCs would be forced to sell, and AT&T would be forced to buy; they would merely haggle over the terms. But neither, in that situation, would have any incentive to recede from the position most favorable to it. Thus the process presumably would result in alternative sets of terms, and some decision-maker would have to decide which set of terms, if either, more nearly serves the interests at stake. The process proposed thus would not advance the goal of divestiture at all. Yet, in the interim, of course, the ongoing operations of the firms—most particularly the Long Lines network—would be disrupted, and the financial standing of the firms, hence their ability to attract capital, would be most uncertain.

⁸ The divestiture/buy-back proposal appears to derive primarily from the view that ratepayers' interests can be protected only if AT&T is compelled to "purchase" the assets it will retain at fair market value, a value presumed to be above the regulated value on which debt is to be allocated among AT&T and the local exchange companies. As explained below, the Department believes that these premises of the proposal are fundamentally incorrect.

⁹ In addition, as also indicated in the Competitive Impact Statement, if necessary the Department will utilize the visitatorial powers of Section VI of the proposed modification to learn the views of appropriate employees, including present or future BOC executives, as to the adequacy of the proposed reorganization plan.

¹⁰ The FCC anticipates that implementation of the reorganization plan will occasion applications by AT&T or the BOCs under Sections 214(a) (discontinuance of service; acquisition of facilities), 221(a) (acquisition of another carrier's property), and 310(d) (transfer of radio license or stock of radio licensee) of the Communications Act of 1934.

will weigh the plan's competitive benefits.

The FCC's consideration of the collateral effects of the details of the divestiture required by the modification seems an appropriate exercise of its jurisdiction in this area. The Department and the FCC have consulted on the coordination of the 214 proceedings with the Department's own consideration of the plan. In all events, the Department will give great weight to the FCC's views, whether developed in the course of the 214 proceedings or otherwise, in carrying out its responsibilities under the modification.

Apart from this consultation with the Department, the FCC proposed that it be authorized to institute proceedings for construction or revision of the modification provisions, so that it can independently seek early determinations by the Court of the meaning of modification provisions that might have a collateral effect on action the Commission is contemplating. The Department believes that such a provision should not be added to the proposed modification.

The absence of an explicitly stated right to seek construction or revision of the modification need not prevent the FCC from seeking resolution of questions concerning the relation between its actions and the modification's provisions under appropriate circumstances. Consultation with the Department will provide one means of assessing the effect of the modification. If an actual conflict between the modification and a Commission action nonetheless arises, it is likely that, if the FCC's interests were significantly affected by the conflict, it would be permitted to intervene for the purpose of resolving that conflict.

The FCC's proposal is thus unnecessary. Moreover, if it were adopted, it would be used to institute proceedings in the absence of a justifiable controversy. The express purpose of the Commission's proposal is to enable it to request that the Court predetermine the bearing of the modification's requirements on possible Commission rules or orders. At the time of such a request, the Commission would not have settled on the terms of a final rule or order, nor even have committed itself to a particular policy or the broad outlines of its contemplated action. Thus, what the Commission would be seeking would be a purely advisory construction of the modification or a revision that might well prove unnecessary or inapposite to the FCC's final order. Even if the general thrust of the FCC's contemplated action were known, the Court would not have

available a Commission record of the sort that would undoubtedly underlie any final rule or order, nor would the Court have the benefit of an opinion or other record of Commission deliberations to amplify the Commission's intent. Without such information, the task of determining the proper accommodation between the obligations of the modification and the Commission's action would have to be conducted in the abstract. In circumstances such as these the courts have consistently refused to render opinions in the absence of an actual controversy concerning the application of a final agency action. *E.g., Toilet Goods Ass'n v. Gardner*, 387 U.S. 158 (1967). Indeed, the Supreme Court has found that "to review regulations not yet promulgated, the final form of which has only been hinted at, would be wholly novel." *EPA v. Brown*, 431 U.S. 99, 104 (1977). Accordingly, even if the FCC were given express authority to seek construction or revision, such a provision would not override established doctrines of ripeness, and is unnecessary in light of the opportunities otherwise available for resolving actual controversies concerning FCC actions.

The FCC also urged that the Court add to the proposed modification a clause stating that: "Nothing in this decree shall be construed to affect any power conferred by law upon the Federal Communications Commission." A number of private parties made similar proposals. While, as these parties, noted, a similar clause was included in the decree in *United States v. St. Louis Terminal Railroad Ass'n*, 224 U.S. 383 (1912), the Department believes that such an addition to the proposed modification is neither necessary nor advisable. The FCC itself acknowledged that its proposed provision "would not expand the court's power or contract the Commission's powers." FCC Comments at 28. If this is the case, it would not only be unnecessary but also a source of possible misinterpretation to add such a provision to the agreement negotiated by the parties.

2. Consultation with State Regulators: Comments of state officials and agencies also recognize that divestiture may be a reasonable means of promoting competition in telecommunications. The primary concern expressed in these comments was that consequences to state regulatory schemes should be taken into account in implementing the proposed modification. Accordingly, the commenting states were virtually uniform in requesting, with varying degrees of specificity, that they be given a role in reviewing (and, some states

urged, approving or disapproving) the details of the plan of reorganization required by the proposed modification. To this end, many states informally renewed the request for intervention that a few states presented to the Court earlier in this proceeding.

The Department recognizes that the plan of reorganization affects aspects of intrastate communications, for which state authorities will have ongoing regulatory responsibility. Thus we agree with the states' view that they must have a full opportunity to express their concerns about the implementation plan consistent with the need to implement the decree expeditiously, and that the department should take their concerns and suggested alternatives into account in deciding whether the implementation plan meets the modification's obligations and objectives. The states' regulatory interests and the proposed modification's antitrust enforcement objectives can be accommodated most effectively if the concerns of the states are identified and made specific as soon as possible. With the time approaching when the details of AT&T's plan of reorganization must be analyzed, the Department agrees that a well defined procedure for receiving the views of state regulatory officials should be created.

Joint comments filed by nine state regulatory agencies contained a specific proposal that could provide the basis for developing such a procedure. Joint Comments of South Dakota *et al.* These states recommended that they be given access to proposals for the plan of reorganization; that they present their views in comments and working sessions with the parties; that they be given data necessary to evaluate the plan; and that their views be meaningfully considered in evaluating the plan. In the view of the Department, if these recommendations were combined with procedures to ensure that the states' views were presented in an orderly, manageable and reasonably expeditious fashion, the states' interests in this matter could be fully protected, and the Department could secure the benefits of the states' experience in regulating the BOCs. The Department will begin discussions with those regulators to fashion such a mechanism, and will inform the Court when a plan for state participation has been reduced to specifics.¹¹

¹¹ As noted above, this opportunity for state participation will be complemented by the states' right to participate in the 214 proceeding to be conducted by the FCC. In that forum the states may explore many of the "collateral effects" upon which the FCC will be focusing.

Another avenue of state participation was suggested in several of the comments, which proposed that the states be given the right to petition the Court for construction or modification of the decree after it is entered. This proposal should be rejected for all the reasons given above in connection with the FCC's similar proposal. In addition, the Department would regard as unwieldy and potentially disruptive any provision that accorded an automatic right to seek decree interpretations to numerous parties having separate and possibly divergent interests.

3. Proposals for Resolution of Jurisdictional Issues: A few comments noted that some activities affected by the decree are arguably subject to the jurisdiction of either the FCC or the state regulatory agencies, but not both, and asked that the Court resolve potential jurisdictional disputes between the FCC and state agencies. In the view of the Department, the Court should not attempt to do so. Since the proposed modification has not been entered as a decree of the Court, none of the predicted jurisdictional disputes has ripened sufficiently to be amenable to adjudication by any court. More important, the questions of the respective jurisdiction of the FCC and state regulators about which some commentators have speculated have no direct connection to the issues in this proceeding, and no attempt should be made to adjudicate them here.

C. The Possibility of Conflicting State Regulatory Action

The process of consultation described above and the consequent development and approval of an implementation plan that adheres to the modification's principles will, in the Department's view, substantially remove the concerns that many state comments have expressed about the effects of the modification on their continuing exercise of regulatory responsibility. Many of the possibilities of conflict that some states seemed to perceive are, at present, only hypothetical; some, indeed, are based on a misunderstanding of what the modification is intended to do. All such possibilities should be addressed only if and when they arise.

Some possibilities, however, must be addressed now. The comments of certain states contended that, because they currently regulate the intrastate aspects of BOC operations, the divestiture provisions of the proposed modification and the restrictions on post-divestiture BOC operations are subject to state review and that state regulators have the power, as a matter of state law, to approve or disapprove

actions taken in compliance with the modification's requirements. These comments further contended that states could refuse to authorize the intracorporate transactions involved in the divestiture itself and thus, if they see fit, frustrate achievement of the modification's basic objectives. *E.g.*, Comments of Alabama *et al.*, at 12. The idea apparently is that, even though this Court would have found the decree in the public interest as a means of enforcing federal law, the states, by disallowing actions the decree requires, or by authorizing or compelling actions it forbids, could excuse the BOCs from any obligation to comply with the decree's mandates.

Of course, it is possible that no state would find it appropriate to take such actions. Even so, however, these sorts of contentions call into question the federal judicial power that the proposed modification necessarily invokes, and the Court therefore should now consider their validity. If, in effect, the modification did no more than present to the state regulators a possible remedy, which they, in turn, were free either to accept or to reject, the modification could not be deemed adequate to the antitrust task and hence in the public interest. This, however, is not the case. The Court unquestionably has the power to enter the modification and to enforce compliance with its basic features. The principles governing the resolution of actual conflicts between state law or regulatory action and the obligations imposed on private parties by courts order enforcing federal law refute the states' contention that, under the "state action" doctrine of the *Parker v. Brown* line of cases,¹² states could block implementation of the decree by issuing regulatory orders inconsistent with its provisions. It is established law that a "state law prohibition against compliance with the (federal district court's) decree cannot survive the command of the Supremacy Clause of the United States Constitution."¹³ In short, otherwise valid state regulation cannot be applied to frustrate the objectives of federal law.¹⁴

¹² *Parker v. Brown*, 317 U.S. 341 (1943); *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975); *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978); *California Retail Liquor Dealers Ass'n v. Medical Aluminum, Inc.*, 445 U.S. 97 (1980); *Community Communications Co. v. City of Boulder*, 102 S.Ct. 835 (1982).

¹³ *Washington v. Fishing Vessel Ass'n*, 443 U.S. 658, 695 (1979). See also, *e.g.*, *Cooper v. Aaron*, 358 U.S. 1 (1958).

¹⁴ *E.g.*, *Nash v. Florida Industrial Comm'n*, 389 U.S. 235 (1967); *Sperry v. Florida*, 373 U.S. 379 (1963).

The principles underlying the limited "state action" exemption from the federal antitrust laws do not confer the preemptive power the states seem to claim. The issue in state action cases usually is whether the state's involvement in allegedly anticompetitive conduct renders that conduct exempt from the antitrust laws. In this proceeding for review of the proposed decree modification, however, the question is not whether state regulation has immunized AT&T's activities from the antitrust laws. Indeed, the private anticompetitive actions at which the proposed modification is directed repeatedly and consistently have been held not exempt from the antitrust laws.¹⁵ Rather, the issue raised by the states' assertion is whether a state can validly exercise its regulatory powers to block compliance with a decree designed to prevent conduct unquestionably within the purview of a federal statute.

Of course it is true that neither federal antitrust law nor the proposed modification deprives the states of their power to regulate intrastate telecommunications services. We emphasize what was said in the Competitive Impact Statement (47 FR 7180 (1982)):

(The proposed modification) would in no way limit or expand the respective scope of present federal and state regulatory jurisdictions. The states would continue to regulate the provisions of both intrastate toll service and local exchange service. The FCC would continue to regulate the provision of interstate service.

Accordingly, in considering whether the proposed modification provides an appropriate remedy for non-exempt conduct, the Court properly should take into account the modification's impact on the states' ability to achieve legitimate state regulatory objectives—whether the modification's terms necessarily conflict with the regulatory policy of a state, or whether the policy can be vindicated consistently with the modification's requirements.

The Department believes, however, that state regulatory powers cannot operate to bar implementation of the

¹⁵ *United States v. American Tel. & Tel. Co.*, 461 F. Supp. 1314, 1320-21 (D.D.C. 1978). *Accord*, *United States v. American Tel. & Tel. Co.*, 427 F. Supp. 57 (D.D.C. 1976, Judge Waddy), *cert. denied*, 434 U.S. 966 (1977); *Phonetele v. American Tel. & Tel. Co.*, Nos. 77-3877, 77-2936 (9th Cir. 1981); *Sound, Inc. v. American Tel. & Tel. Co.*, 631 F.2d 1324 (8th Cir. 1980); *Essential Communications Systems, Inc. v. American Tel. & Tel. Co.*, 610 F.2d 1114 (3d Cir. 1979); *Northeastern Tel. Co. v. American Tel. & Tel. Co.*, 477 F. Supp. 251 (D. Conn. 1978), *rev'd on other grounds*, 651 F.2d 76 (2d Cir. 1981), *cert. denied*, 102 S. Ct. 1438 (1982).

modification. This is particularly clear with respect to the modification's basic divestiture requirement, a requirement that the Department has long viewed as fundamental to the achievement of the objectives of the federal antitrust laws in the telecommunications industry. Structural separation of the Bell System's potentially competitive enterprises from its monopoly holdings was the principal relief sought in both the *Western Electric* and *AT&T* cases. Well before the commencement of trial in the *AT&T* case, the Government indicated clearly that federal antitrust policy required the separation of the Bell System's local and interexchange facilities. Plaintiff's First Statement of Contentions and Proof at 527. Consequently, when the states warn (as some have) that they may issue orders blocking BOC asset transfers required to comply with the divestiture requirements of the decree, the states threaten to undermine the most basic mechanism for achieving the antitrust enforcement objectives of the decree.¹⁶

The state interests identified in the comments as likely grounds for forbidding asset transfers, however, could be effectuated in other ways, and do not, in any event, outweigh the strong federal interest that divestiture would serve. Many states noted that they have jurisdiction over, and thus an interest in, the provision of intrastate toll service, and asserted that this would justify their refusal to permit BOCs to transfer intrastate toll facilities to AT&T.¹⁷ But an asserted state interest in identifying the particular firm that is to own intrastate toll facilities thus regulated cannot override the substantial federal interest in creating a competitive structure by separating the ownership of interexchange and exchange facilities. The states overlooked the significant federal interest in those same facilities, which are in many instances used to provide both interstate and intrastate toll service. In addition, as discussed elsewhere in this Response, after entry of the proposed modification and implementation of the plan of reorganization, the states will continue

to be able to exercise regulatory power to achieve the regulatory objectives that could validly underlie their asserted interest in controlling the ownership of these facilities.

Moreover, to the extent that the states concerns with the transfer of intrastate toll facilities reflect their opinions concerning the proper configuration of exchange areas under the proposed modification, these concerns will be addressed early in the process of reviewing the plan of reorganization. As discussed in Section III, *infra*, the Department intends to consult closely with the states in reviewing the configuration of exchange areas, and that configuration will control the identification of assets that the BOCs will transfer to AT&T.

The Department accordingly believes that the process of consultation with the states will be a vehicle for the elimination of potential conflicts concerning the transfer of assets from the BOCs to AT&T. If conflicts nonetheless persist and result in state orders forbidding divestiture required by the decree, the state orders would, under applicable law, be preempted.

The states also contended that they could preempt the modification's prohibition of BOC entry into various competitive markets. In assessing this claim, it must be remembered that even if the *Parker v. Brown* doctrine applied with full force to actions required by the decree, that regulatory doctrine would protect only state action that evinced a legislative intent to displace competition. Simply granting a regulated firm permission to engage in a particular activity without displacing competition does not constitute state action under the *Parker* line of cases and cannot prevail over efforts to enforce the antitrust laws. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, *supra*; *Cantor v. Detroit Edison Co.*, *supra*. Accordingly, if a state, without displacing the competitive regime, purports to permit (or indeed, require) the BOC to regulate to participate in competitive markets solely in an effort to increase competition or to widen the BOC's business opportunities, as many states have indicated they may, its action would be preempted by the modification's prohibition on BOC entry. Moreover, as discussed elsewhere in this Response, the states may protect their interests in this area without issuing orders conflicting with the decree.

In sum, once the Court has determined that the modification is in the public interest—that it serves the purposes of the federal antitrust policy without

obstructing legitimate state regulatory objectives—its judgment is not subject to negation by the states. The Supremacy Clause and the normal rules of preemption require that the decree prevail.

This is enough, we believe, to dispose of the general contention that the states are empowered to authorize, compel or excuse actions that violate the modification's terms. It is essential to emphasize, however, that questions of preemption come into play at all only when there is an actual conflict between enforcement of the antitrust laws and the mandates of state regulation. *See, e.g., Cantor v. Detroit Edison Co.*, 428 U.S. 595, 598 (1976). The requisite conflict would exist only if an order of a state regulatory scheme and the provisions of the decree imposed conflicting obligations on AT&T or a BOC. As observed above, the department is confident that, in the course of implementation and enforcement of the decree, many of the fears of possible conflict now voiced will prove to have been unfounded. Indeed, it must be assumed that state regulators themselves will take the operation and purposes of the decree into account in assessing the appropriate application of state law.¹⁸

In any event, there is no need to attempt to anticipate all possible situations in which a state might conclude that it must impose obligations arguably, or even clearly, inconsistent with the decree's terms. The proposed modification will provide the states ample opportunity to resolve questions concerning its application after it is entered as the decree of the Court. As indicated in the Competitive Impact Statement, if a state regulator's order conflicts with the decree, AT&T, the affected BOC, or the Department may invoke the judicial process to resolve the matter. In such a proceeding, with the force and possibly the validity of its order at issue, a state regulatory agency would normally have a sufficiently strong interest in the resolution of the controversy that it would be permitted to intervene.

In any such proceeding, the first question would be whether, in fact, the state obligation interferes with the provisions and objectives of the modification, as properly construed. Only then would it be necessary to

¹⁶ The joint comments of 23 states, 6 utility consumer advocates and 4 public utility commissions assert that: The power possessed by State public utility commissions pursuant to the state action doctrine could, if exercised by some and not by others, result in a balkanized scheme of the telecommunications service and effectively frustrate the procompetitive intent of the proposed settlement. *Alabama et al.* at 12.

¹⁷ It should be noted that pending legislative proposals would give the FCC, rather than the states' jurisdiction over intrastate interexchange communications. If such legislation is enacted, it will preempt state regulation and remove this area of potential conflict.

¹⁸ For example, the "first in the field" policy identified by Illinois (at 8-11) as a potential source of conflict appears designed to protect continuity of service and the utility's investment. There would be no need to apply this policy to prohibit replacement of BOC interexchange service where the BOC has consented and service would not be disrupted.

determine, under Supremacy Clause standards, that the federal antitrust interest served by the particular provision of the decree involved must be deemed superior. The Department expects that the cases of genuine conflict, thus determined, will be rare. In many circumstances, accommodation of the federal and state interests will be possible, and certainly such accommodation is to be preferred. In all events, the procedures and standards involved in making such judgments plainly demonstrate the wisdom and, indeed, the necessity of waiting until conflicts arise before attempting to resolve them.

II. Issues Relating to the Viability and Performance of the BOCs

In this section of the Response, the Department will address a number of concerns raised in the comments regarding the consequences of certain requirements of the proposed modification on the continuing viability of the BOCs. We first address issues raised regarding the BOCs' continuing financial viability, including the relationship between asset valuation and divestiture, and the consequences for BOC viability of divestiture, and the consequences for BOC viability of divestiture and termination of the license contracts under which the BOCs paid for certain Bell System research and development. The Department will then address the effects on local rates of the modification's requirement that the division of revenues process be replaced by a system of access charges. Following this discussion, the Department will address concerns expressed in the comments regarding the rationale for, and likely effects of, the modification's restrictions on the lines of business in which the BOCs may engage. Finally, the Department will discuss issues raised by the comments concerning the absence of restrictions in the modification on AT&T's ability to construct and operate alternative local distribution facilities in competition with the BOCs.

A. Financial Viability and Valuation of Transferred Assets

Many comment expressed concern that the modification fails explicitly to describe the means by which the Department intends to assure that the divestiture does not adversely affect the financial integrity and soundness of the local exchange companies. The ongoing financial soundness of the companies turns on their ability, under sound regulatory principles, to earn sufficient revenues to recover their costs of providing service, including a sufficient

rate of return to attract new capital. The proposed modification thus will affect the financial viability of the local companies adversely only if it somehow forces them to incur costs that the regulators believe it appropriate to disallow in order to avoid increases in local rates.¹⁹

As set forth in the Competitive Impact Statement, the Department's review of the plan of reorganization will pay particularly close attention to the BOCs' technical and financial integrity. Section I of the proposed modification requires that the BOCs have the facilities, personnel and resources (including working capital) needed to carry out effectively the business of exchange telecommunications and exchange access. Accordingly, the modification will not occasion any need to incur capital costs for the provision of local service. In addition, the Department will review carefully the proposed financial structures of the BOCs to ensure that they reflect a sound mix of debt and equity and a cost of embedded debt, in terms of rates and maturities, comparable to the present average cost of debt to the Bell System as a whole.

A number of commenting parties, state governments and regulatory commissions in particular, expressed various concerns regarding proper values to be assigned to the assets which must be transferred between AT&T and the BOCs pursuant to the divestiture required by Section I of the modification. These comments argued that improper asset valuations could unfairly burden BOC ratepayers or afford AT&T unfair competitive advantages. Some of these parties argued that, to minimize any potential adverse impact of improper asset valuations, such valuations should take place before divestiture of the BOCs, or, in the alternative, that the BOCs should be divested intact with a subsequent transfer of assets.

The comments that addressed valuation raised a variety of analytically distinct concerns; the appropriateness of the procedures advanced to deal with them depends, in part, on whether the concerns expressed are actually raised by the kind of divestiture the modification contemplates. The Department believes that, in fact, the contemplated divestiture requires no independent effort to assign values to assets.

¹⁹ The concern that the modification's line-of-business restrictions will affect the local companies' long-term financial health and their ability to provide service at affordable rates is dealt with below.

In the course of the divestiture it will be necessary to allocate the existing debt of the Bell System between AT&T and the BOCs. Many comments rightly pointed out that, were the BOCs to assume debt in addition to that now attributed to the services they will provide, regulators would be forced either to increase local rates to cover the increased cost of debt or to disallow the costs, thus potentially impairing the financial health of the firms. In considering allocation of debt, however, the Department intends that the allocation follow the asset values generally employed in the existing regulatory processes. Since the allocation will depend on existing regulatory treatment of asset values, it should not disturb present relative rate levels.

The Department therefore sees no need for the suggested alternative approaches, approaches which could have significant adverse consequences not only to AT&T, but to the BOCs themselves.²⁰ The suggested alternative procedures appear to stem, not so much from debt allocation questions, but from the view that the divestiture itself will result in some potential gain in value to AT&T in which the BOCs and their ratepayers, as distinct from AT&T's ratepayers, rightly should share. The model that the commentators invoke, either explicitly or implicitly, is that of withdrawal of regulated assets from service, and sale to an unaffiliated and unregulated enterprise. Even in its most basic terms, the model is inapplicable to the divestiture the modification proposes: the divestiture is not a sale to an unaffiliated enterprise, but a division of assets that AT&T and its shareholders already own.

To understand why the divestiture does not require valuation in any sense beyond that involved in appropriate division of the existing embedded debt, it may be useful to set out a brief explanation of asset valuation and its significance to traditional cost of service regulation. In unregulated markets, the value of any asset is determined by market processes. Investors value assets according to the discounted value of the net income stream (revenue less

²⁰ The divestiture/buy-back suggestion, in particular, could have serious adverse consequences. Were AT&T forced to "purchase" assets from the BOCs, it presumably would have to incur substantial new debt at rates substantially above the average rates of embedded debt. These increased debt costs, which could be enormous, would be borne by the ratepayers whom AT&T would continue to serve. Moreover, to the extent that the purchase price exceeds the adjusted tax basis of the assets, the BOCs would incur a potentially very large tax obligation.

variable costs) associated with the production of that output, plus the expected salvage value of the asset on retirement. Thus, in unregulated markets, the value of an asset is the result of market-determined prices. In a regulated environment, the process is just the reverse. Regulators establish the "value" of the regulated firm's capital assets—the rate base on which a rate of return is allowed. This process determines the price of the firm's output. Most regulatory agencies determine the value of the firm's capital stock according to the acquisition cost of assets. Subsequent value is determined by the acquisition cost adjusted for the subsequent recovery of capital from ratepayers through depreciation and return on capital.

Under traditional regulatory practice, if an asset is removed from public service, the economic value at the time of its removal is estimated, and an appropriate adjustment made to the rate base of the regulated firm. If regulated firms were allowed to remove property from regulated service, sell the property for an amount greater than its depreciated value in regulated service, and keep the proceeds, perverse incentives could develop. Such incentives could undermine the integrity of the regulatory scheme, unless such transactions were otherwise accounted for in establishing the firm's revenue requirements. The cost of service collected from ratepayers includes an allowance for the decline in the value of the asset. If an asset is sold for more than its regulatory value, then, unless potential appreciation had been reflected in the allowed rate of return, stockholders will in effect be able to earn an amount greater than what regulators had determined to be reasonable.

The argument has been made that ratepayers contribute to the capital recovery of regulated assets. Therefore, the argument has also been made, although of doubtful general validity, that if an asset is sold and the amount realized is greater than the value at which the asset is carried on the books, ratepayers have been deprived of their share of the appreciation in value, unless the rate base of the regulated firm is reduced to account for the difference between book value and market value.

In the view of the Department, the divestiture required by the proposed modification does not give rise to these concerns. In the first place, the modification will not result in the removal of assets from regulated service. The customer premises

equipment assets as well as the facilities used to provide intrastate interexchange service, which must be transferred to AT&T, will continue to be subject to regulation. Under the FCC's *Second Computer Inquiry* decision, 77 F.C.C. 2d 384 (1980), embedded customer premise equipment will not be immediately deregulated on January 1, 1983, when separation of new CPE from regulated services is required. In Docket No. 81-893, the FCC has solicited comments on procedures that might be used to detariff such equipment.²¹

Accordingly rates charged for the provision of services transferred to AT&T will continue to be based upon the cost of the assets devoted to regulated service: There will be no realized gain to any regulated firm as a result of divestiture. To the extent that embedded CPE is deregulated, the FCC has indicated in Docket No. 81-893 that it will prescribe appropriate means of valuation and of protecting ratepayer interests.

Some comments nevertheless argued that local service ratepayers should be compensated for any excess of the market value of transferred assets over book value. Even assuming that the divestiture were an appropriate occasion for recognition of gain (and, presumably, loss²²) and for participation in gain (or loss) by the ratepayers, the argument could be sound only if neither CPE customers nor intrastate interexchange customers as a distinct class paid for the excess capital recovery responsible for the excess of market values over book values. Put another way, the argument would be correct only if local ratepayers as a class, but not interexchange or CPE customers, paid the excess depreciation responsible for the differences between market and book value.

With respect to transferred interexchange facilities, assuming that the market value of such facilities exceeds book value,²³ there is no

indication that local ratepayers as a distinct class have "paid for" any excess capital recovery which accounts for the difference. In order for this to have occurred, revenue from the provision of local exchange service would have to have exceeded the costs of providing such service. In other words, for local ratepayers to have "paid for" the excess capital recovery resulting in an excess of market over book value, local rates would have to have subsidized intrastate interexchange services.²⁴ Yet this is directly contrary to the arguments of many of the comments, which assert that the flow of revenues is in the opposite direction, i.e., from interexchange to local. In any event, it is highly unlikely that it would be possible to identify such particular classes of customers with any precision.

Similarly, with respect to customer premises equipment, it is difficult to understand how local ratepayers as a class would be disadvantaged by the transfer of customer premises equipment to AT&T even if the market value of such equipment exceeds its book value.²⁵ Under the FCC's *Second Computer Inquiry* decision, embedded customer premises equipment may remain regulated for some period. States, therefore, would continue to have jurisdiction to determine the prices AT&T may charge for such equipment.²⁶ Thus, even if local ratepayers can be said to have "paid for" the excess capital recovery, they may retain after divestitures, if they wish, the very same regulated customer premise equipment. The only difference, from the customer's point of view, will be that maintenance of such equipment will be the responsibility of AT&T rather than the BOCs. If the book value is lower than

that such assets have been underdepreciated, rather than overdepreciated, in relation to their economic value—that is, the book value of such assets is likely to be higher than their economic value.

²¹ If this is indeed the case, it would benefit local ratepayers to have the divestiture occur as soon as possible.

²² Some comments asserted that the BOCs should be permitted to retain such equipment because it has generated revenues in excess of costs which have been used to hold down the rates charged for other services. These comments, therefore, implicitly argued that the market value of such equipment is likely to be higher than book value. On the other hand, a number of comments, including those of United Telecommunications and nine Western state utility commissions, argued that customer premises equipment has been greatly underdepreciated and that, therefore, the book value of such equipment exceeds market value. There is, therefore, substantial disagreement on this issue.

²³ As discussed in Section V, while some state statutes may not clearly grant state commissions jurisdiction over CPE provided by AT&T, there is no apparent reason why such jurisdiction could not be enacted if the state legislatures deem it appropriate.

²¹ Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), CC Docket No. 81-893, Notice of Inquiry (Released April 13, 1982). The Commission's *Second Computer Inquiry* decision is currently on appeal before the U.S. Court of Appeals for the District of Columbia, *Computer & Communication Industry Ass'n v. FCC*, D.C. Cir. Nos. 80-1471 et al. If the Commission's decision is reversed on jurisdictional grounds, of course, the states would retain their existing jurisdiction over customer premises equipment.

²² If book value were above market value for assets transferred to AT&T, and local ratepayers were responsible for the underdepreciation of such assets, the argument that divestiture provides an occasion for recognition of gain or loss would dictate that the BOCs should compensate AT&T for the difference.

²³ With the rapid technological changes that have occurred in interexchange technology, it is likely

market value for such equipment, local ratepayers will continue to benefit by a regulated price that is lower than the price that the market value of such equipment would otherwise indicate. Even if such equipment is deregulated, as discussed above, the FCC has indicated that it will prescribe proper methods of valuation and means of protecting ratepayer interests.

The Department believes, therefore, that many of the concerns articulated in the comments on this issue have no basis in economic reality. Even in the event that such concerns do materialize, however, regulatory agencies will retain complete authority to make such adjustments as may be appropriate to the rate bases of the BOCs and AT&T. All these considerations demonstrate that any legitimate regulatory concerns in this area are a product of regulatory action and susceptible to regulatory solution. Accordingly, none of these concerns constitutes a basis for suggesting that the modification is not in the public interest.

Additional concern was expressed that if assets were transferred to AT&T at a value below market value, AT&T would gain an unfair competitive advantage. While, as discussed above, the Department believes that this possibility is unlikely to occur, even if it did, it would not confer a competitive advantage on AT&T. The embedded CPE assets which will be transferred to AT&T, for example, will continue to be regulated for some period of time. The states, therefore, will retain jurisdiction over the prices at which such equipment will be offered. If, in fact, the market value of such equipment is higher than the transfer value, AT&T's prices for such equipment would be constrained by regulation at a level below what the market value would dictate. In these circumstances, regulation, not AT&T, would determine the price of CPE.

Even in the event that embedded CPE is deregulated, the consequence would be that AT&T would be permitted to sell such CPE for a price higher than the regulatorily-determined price. But that price would be the same, *i.e.*, the maximum price sustainable in the competitive context, regardless of any payment to the BOCs. The sunk cost of CPE is irrelevant to its pricing by an unregulated enterprise.²⁷ Accounting

profitability, but neither prices nor market share, would be affected. Similarly, the transfer of interexchange assets to AT&T at a value below market value would similarly convey no unfair competitive advantage to AT&T in the event of deregulation. It would not lower the incremental cost to AT&T of providing interexchange service, or provide any continuing advantage to AT&T relative to its interexchange competitors.

Some comments, from state commissions in particular, argued that the modification should contain some mechanism for compensating the BOCs for the research and development funded by the BOCs under the license contracts. These comments argue that BOC ratepayers have in effect paid, through license contract fees, for Bell Labs research which has not yet been embodied in products and services used by the BOCs. Therefore, according to these comments, the BOCs are entitled to some compensation for these payments with the termination of the license contracts.²⁸

Under the modification, the BOCs will have substantial rights to make use of the fruits of research and development performed by Bell Labs. Under Section I of the modification, AT&T must transfer to the ABOCs the rights to sufficient technical information to permit the BOCs, independently of AT&T, to perform "exchange telecommunication and exchange access functions, including the procurement for and engineering, marketing and management of those functions." In addition, AT&T has made a commitment to the Department that it will continue to license to the BOCs, on a royalty-free basis, all existing patents and patents issued within five years of the date of entry of the modification. Such licenses will be for the life of the patent and will include the right to grant sublicenses to others to provide the BOCs with goods and services for the BOCs' own use.

With respect to technical information other than patents, AT&T has also made a commitment that it will furnish to the BOCs additional Bell System technical

from the market. Since the divestiture required by the modification would remove entry barriers to interexchange services and CPE, AT&T would not be able to recoup such foregone profits by raising prices later, because to do so would only invite further entry.

²⁸In addition, in its comments, the Ohio Public Counsel stated that when AT&T acquired its interest in Cincinnati Bell, the sole consideration given for such interest was an agreement to provide services to Cincinnati Bell under the license contract. The Department has been advised by AT&T that it is negotiating arrangements with both Cincinnati Bell and SNETCO to take into account the termination of the license contracts.

information, of the type required to be furnished on divestiture, that is created within one year of that date. The BOCs will have the royalty-free right to make such use of that information as is necessary to enable them to perform their functions, including the right to license the use of such information to others for purposes of obtaining additional sources of supply for products and services now obtained from AT&T and its affiliates. These rights, the Department believes, will substantially benefit the BOCs in ensuring their ability to operate in a sound technical and financial manner.

B. Effects of Access Charge Provisions

Section II and Appendix B of the modification require the BOCs to provide exchange access to intercity carriers and information service providers that is equal in type, quality and price to that provided to AT&T. Such access arrangements must be offered by the BOCs under tariff on an unbundled basis with separate, cost-justified charges for each element of access. A number of comments expressed concern that the access charges, which will substitute for the division of revenue process, will result in a substantial increase in local telephone rates because such charges will eliminate contributions flowing to local exchange rates from interexchange services under current division of revenues procedures.

The proposed modification does not, nor is it intended to, affect the jurisdictional separation rules under which the FCC and the states allocate the costs of providing service between federal and state jurisdictions, or the state commissions' power to allocate costs between local exchange and intrastate interexchange services they regulate. The cost-based pricing required by the modification governs only the BOCs' own efforts in formulating rates in order to assure that those efforts do not discriminate among interexchange carriers. The level of access charges, and their contribution to the costs of local telephone service, therefore, will continue to be a product of state and federal regulatory policy.

A number of comments from independent telephone companies and state commissions also raise issues regarding the effects on independent telephone companies of replacing the division of revenues process with access charges. Some of the comments submitted in this area appear to assume that the modification requires the replacement of the current settlements process between AT&T and

²⁷Some comments seem to assume that any realized difference there may be between book value and unregulated market value would be used by AT&T to subsidize the provision of interexchange services or CPE to disadvantage competitors in those markets. Foregoing current profit to subsidize anticompetitive pricing strategies, however, only makes sense if those profits can be recouped later after competitors have been driven

independent telephone companies with access charge tariffs. Other comments expressed concern that the filing of access charge tariffs will have the effect of raising rates to customers of independent telephone companies.

The modification by its terms applies only to AT&T and its affiliates. The access charge requirement imposed by the modification, therefore, only applies to the BOCs and not to independent telephone companies. It is possible, however, that regulatory authorities may decide to substitute an access charge arrangement for the current settlements process between AT&T and independent telephone companies.²⁹

As to concern that the access charge mechanism will cause increases in rates for subscribers of independent telephone companies, as discussed above, the modification leaves unaffected the jurisdiction of regulatory bodies to allocate costs within and among their jurisdictions. Thus, the joint federal-state boards established by the FCC pursuant to Section 410(c) of the Communications Act, 47 U.S.C. 410(c), may, consistent with the modification, continue to allocate the costs of providing service between federal and state jurisdictions in the same manner as they have in the past. Similarly, the states may continue to allocate the costs of providing services within their jurisdiction in the same manner as they have in the past. Any contribution to the costs of the local exchange service provided by independent telephone companies deemed appropriate by regulatory bodies can be recovered, just as it is now, through contractual settlements arrangements, through a system of access charges prescribed by regulatory authorities, or a combination of both.

A number of comments expressed concern regarding the proposed modification's effect on service to independent exchange carriers, many of which serve sparsely populated, rural areas of the country. One such concern, expressed in joint filings made by Wyoming Telephone Company, Inc., *et al.*, and by Haviland Telephone Company, Inc., *et al.*, is that after divestiture of the BOCs, independents may have difficulty in obtaining adequate connecting interexchange services from AT&T in rural areas

where the costs of operation are high. More specifically, it has been suggested that an interexchange carrier such as AT&T will not have an incentive to serve high cost rural areas if its costs exceed its revenues for that service.

At the outset, it should be noted that the exchange areas for which the BOCs will have exchange access responsibilities encompass rural areas associated with an SMSA. Thus, to the extent that an independent rural carrier obtains connecting facilities (Class 5 to Class 4 trunks) from a BOC, it may continue to do so in the future. Thus, interexchange carriers, including AT&T, need only construct transmission facilities to a single point of interconnection in an exchange area to serve all points in the exchange area, including territory served by an independent telephone company.

Even with respect to AT&T, it should be emphasized that the modification will have no effect on its incentives to serve particular areas of the country. Whether or not the BOCs were divested from AT&T, a carrier would have little incentive to provide service unless it is permitted to recover the costs of doing so.

In addition, assuming that there are significantly higher costs in the provision of service to rural areas,³⁰ the costs of providing such service can be recovered either through a de-averaged rate structure, or by setting rates in a way that averages costs over high cost and low cost areas. In either case, jurisdiction over AT&T's interstate rates will continue to reside in the FCC, while the states will continue to exercise jurisdiction over intrastate rates. Moreover, as set forth in the Competitive Impact Statement, the states and the FCC will continue to exercise jurisdiction with respect to the level of access charges for the provision of intrastate and interstate interexchange service. Thus, as a matter of regulatory policy, a state may decide to pool the costs of providing intrastate access within a state and thus require the filing of access charges that reflect the average cost of providing intrastate access. The FCC may similarly decide, consistently with the modification, to require averaging of interstate access charges. The modification thus leaves

unaffected the jurisdiction of federal and state agencies to prescribe rate structures.

Furthermore, after divestiture, the FCC and state regulatory bodies will have the same powers as previously to ensure that interexchange carriers provide adequate service to all areas of the country. Typically, regulatory bodies are empowered to order connections between carriers, to grant operating authority on the condition that a carrier provide service to rural areas, and to prevent the abandonment or discontinuance of service by a carrier.³¹

In its comments the State of Illinois indicated that the Illinois Commerce Commission has this authority over intrastate telephone carriers in Illinois. It expressed concern, however, regarding the Commission's ability to enforce existing contracts for connecting service between Illinois Bell Telephone Company and independent carriers because, after the proposed divestiture, Illinois Bell would be precluded from providing interexchange service. While clearly an order directing a BOC such as Illinois Bell to maintain its contracts with independents for the provision of interexchange service would be inconsistent with the proposed modification, such an order directed to AT&T would not be. Since, after the divestiture, AT&T will own and operate the interexchange facilities previously used by the BOCs in providing intrastate interexchange service, it seems clear that the state commissions will have jurisdiction over AT&T for its intrastate operations and may enforce state laws requiring AT&T to interconnect with independents and to provide intrastate interexchange service.

Consequently, regulatory bodies' jurisdiction to ensure the adequate provision of interexchange service to rural areas will be unimpaired by the proposed modification.

C. Line of Business Restrictions

A great deal of the concern regarding BOC viability expressed in the comments relates to the line of business restrictions placed on the BOCs by Section II(D) of the proposed modification. In addition, the comments showed a significant degree of uncertainty regarding the reach and application of the line of business restrictions. In this section of the Response, the Department will attempt to clarify those aspects of the line of business restrictions regarding which the comments have expressed some confusion. The Department will also

²⁹ There were conflicting views in the comments as to whether independent telephone companies should be required to file access charge tariffs. A number of comments also expressed conflicting views as to whether access charges should be structured in a way that averages the costs over high and low cost exchange areas. The FCC is currently examining these issues in Docket No. 78-72.

³⁰ While it has been argued that the cost of providing interexchange service to rural areas exceeds the cost of providing service to more densely populated areas, that showing has not been convincingly made. In the trial of *United States v. AT&T*, for example, evidence was introduced which tended to show that the cost of construction in more densely populated areas outweighed whatever cost penalties might be associated with providing interexchange service to less populated areas.

³¹ See, e.g., 47 U.S.C. 201 and 214.

address here issues raised by the comments concerning the need for, and effects of, the restrictions.

1. *Clarification of Restrictions:* A number of comments addressed the scope of the restrictions contained in the proposed modification on the businesses in which the divested BOCs may engage.

Paragraph II(D) of the modification places three limitations on the divested BOCs.³² First, the BOCs are prohibited from providing interexchange telecommunications and information services as these terms are defined in Section IV. Second, a BOC may not manufacture or provide telecommunications products or customer premises equipment, including equipment presently under tariff, except for the provision of customer premises equipment for emergency services. Finally, except for exchange telecommunications and exchange access services, the divested BOCs may not provide any products or services apart from natural monopoly services actually regulated by tariff.

a. *Routing Among Interexchange Carriers.* A number of comments raised questions regarding the scope of these restrictions. Western Union, for example, questioned whether the BOCs would be permitted to route calls to implement arrangements between interexchange carriers for handling traffic overflows. As the Department understands the question, the BOCs would be permitted to perform such functions. The routing of calls among interexchange carriers in overflow conditions is a network management function which, under the proposed modification, would be an exchange service. Section II(D)'s prohibition on the offering of interexchange telecommunications is intended to preclude the BOCs from performing the interexchange switching or routing functions integral to the operations of an interexchange carrier. The network management function, as described, which merely sorts calls among carriers, would not fall within this category.³³

³² Some comments, particularly from independent telephone companies, expressed concern that the restrictions on BOC lines of business might be interpreted to restrict the businesses of independent telephone companies. The proposed modification would settle a controversy between the United States and AT&T, and applies by its terms only to AT&T and its affiliates. The obligations and restrictions contained in the proposed modification, therefore, do not apply to independent telephone companies.

³³ In addition, the modification excludes from the definition of prohibited information services those services when used for the management, control, or operation of a telecommunications system, or for the management of a telecommunications service. The modification thus contemplates that the BOCs may perform a variety of network management

b. *Pole Attachments and Conduit Space.* Some comments, principally those of cable television operators, expressed concern that the proposed modification be fully consistent with the Federal Pole attachment act of 1978, 47 U.S.C. 224. That Act gives the Federal Communications Commission authority to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions, are just and reasonable." 47 U.S.C. 224(b)(1). The FCC is empowered to regulate rates, terms and conditions for pole attachments only where those matters are not regulated by a state. 47 U.S.C. 224(c)(1). A state that regulates these matters must certify to the FCC that it does so and that its regulation satisfies the requirements of the Act.

In the Department's Competitive Impact Statement, pole attachments were cited as an example of a natural monopoly service actually regulated by tariff. The Federal Pole Attachment Act of 1978, however, does not require that pole attachments be regulated by tariff. The National Cable Television Association pointed out that, if the modification is read to require that pole attachments actually be regulated by tariff, a conflict may arise between the 1978 Act and the modification.

It is not the intent of the modification to change the regulatory scheme governing pole attachments or to impose obligations inconsistent with existing law. The reference to pole attachment as a natural monopoly service actually regulated by tariff was based upon a misunderstanding of the current regulatory scheme. Even though not actually regulated by tariff, however, conduit space and pole attachments would remain within the ambit of BOC operations. Poles and conduit space are clearly facilities essential for the provision of exchange telecommunications. Leasing of capacity in conduit space and pole attachments would similarly be permitted under the modification, since the BOCs have traditionally shared such space and attachments with other utilities as a natural adjunct of their exchange operations.

c. *Inside Wiring.* A number of commenting parties raised issues regarding the status of inside wiring under the modification. Xerox, for

functions for the benefit of interexchange carriers. Such functions would include, in addition to functions such as those discussed above, reassignment of traffic for back up and restoration purposes pursuant to agreements among carriers and in response to requests from agencies with responsibility for national security and emergency preparedness.

example, questioned whether inside wiring, which, under the modification, falls within the category of exchange telecommunications, includes all customer premise wiring between the BOC's outside plant and the customer's terminal equipment. The intent of the modification is to include within exchange telecommunications at least the wiring which connects the BOC's protection block with one or more pieces of customer premises equipment, e.g., a PBX. It is not clear at this time, however, whether such wiring connecting two pieces of customer premises equipment, e.g., a PBX and an individual telephone, is more appropriately classified as an aspect of the provision of customer premises equipment. The Department intends to give this issue further consideration and will provide clarification at the earliest possible date.

Some comments expressed concern that leaving inside wiring with the BOCs might be read to imply that such wiring is a natural monopoly. As noted above, however, the BOCs may provide inside wiring, not because it is a natural monopoly service actually regulated by tariff, but rather because it constitutes an aspect of exchange telecommunications.

Other comments suggested that the BOCs should be required to give customers the option of purchasing inside wiring at a regulatorily-determined price. The Department recognizes that New York and other states permit customer ownership of inside wiring and that more states are considering that option. The modification would neither require nor prohibit such regulatory action. Indeed, the modification is not intended to imply that inside wiring should not be offered on a competitive basis.³⁴

d. *Telephone Answering Services Equipment.* Comments from providers of telephone answering services raised questions regarding the ability of the BOCs to offer particular types of equipment necessary to the provision of telephone answering services. The major types of equipment used to provide this service are switchboards

³⁴ While, under the modification, the BOCs would be permitted to offer inside wiring as a part of exchange telecommunications, even if deregulated, regulatory agencies may decide as a matter of policy that the BOCs should be foreclosed from its provision. This result would not conflict with the modification, which only permits the BOCs to provide such wiring. Indeed, the fact that the modification would permit the BOCs to provide inside wiring should not be taken as an indication of the Department's views with respect to the appropriate role of BOCs, as regulated monopolists, in the provision of competitive services which fall within the ambit of exchange telecommunications.

and a system called a concentrator-identifier.

The confusion appears to stem from the fact that the concentrator-identifier consists of two pieces of equipment. The concentrator is located in the central office. As its name suggests, it concentrates up to 100 customer access lines into six lines which run from the central office to the telephone answering service. The identifier, which is located on the telephone answering service's premises, identifies which customer has an incoming call to be answered.

Where the BOCs offer the concentrator-identifier as a single service, the modification would permit the BOCs to continue to offer both the concentrator and identifier, even though the identifier is located on the customer's premises. As pointed out in the comments, even though separately located, the concentrator-identifier is a single system and performs an integrated function, similar to the multiplexing and demultiplexing equipment excluded from the definition of customer premises equipment under Paragraph IV (E) of the modification. As such, the identifier does not fall within the category of prohibited customer premises equipment merely because it is located on a customer's premises. The switchboard, on the other hand, like other kinds of customer switching equipment, could not be provided by the BOCs.³⁵

e. Information Services. Other comments raised issues regarding the distinction between permitted exchange telecommunications and prohibited information services. As explained in the Department's Competitive Impact Statement, the BOCs may offer exchange telecommunications services, which are defined derivatively to mean the offering for hire, within an exchange, of telecommunications facilities, or of telecommunications by means of such facilities via electronic means, without regard to the type of transmission facilities used. Such services may not, however, involve a change in the form of content of the message as sent or received. Nor may the BOCs provide a service which includes voice or data storage as a feature of such service offering. The fact, however, that a

particular technology inherently involves the storage of information would not, by itself, be sufficient to classify a particular offering as a prohibited information service. The modification thus draws a distinction between those functions which are inherent in the provision of telecommunications services within an exchange and those intervening changes in the form or content of a message which may be performed on a competitive basis. The modification does not, nor is it intended to, limit the ability of the BOCs to take advantage of new technologies in the provision of exchange telecommunications.

Among others, the California Public Utilities Commission questioned whether, under the proposed modification, the BOCs would be permitted to offer Centrex, Custom Calling I and Custom Calling II services. Centrex service is simply the remote switching of calls at a customer location by a central office switching machine. As such, it is inherently simply an exchange switching function and an integral aspect of exchange telecommunications which the BOCs may provide. Similarly, Custom Calling I, which includes call waiting, call forwarding and speed dialing, is an application of basic switching capabilities inherent in electronic central office switching machines and thus may also be provided by the BOCs.

Custom Calling II, on the other hand, goes beyond the mere switching and transmission of calls basic to the provision of exchange telecommunications services. Custom Calling II includes, for example, call answering and advance calling. The former provides the ability to record and store incoming messages for later retrieval by customers. Advance calling permits a customer to pre-record a message to be transmitted to a pre-designated number within a 24 hour period. These applications are functionally separate and distinct from basic switching and transmission of telecommunications within an exchange and can be provided on a competitive basis.³⁶ The proposed modification would, therefore, prohibit the offering of Custom Calling II services by the BOCs.

A number of comments questioned whether the BOCs would be permitted to offer time and weather announcements, mass calling services, and enhanced 911 service under the proposed modification.

Time and weather announcements are normally provided by the BOCs to the

public without separate charge. These services involve making information available to customers by electronic means and thus would constitute prohibited information services under the proposed modification. At the present time, however, in light of the pricing of these services, it is unclear whether the provision of these services by firms other than the BOCs is feasible. Such services could be offered by an independent information services vendor in areas that have measured rate local calling. The local BOC and the vendor would have every incentive to agree to share the message unit revenue from calls to time and weather. It is not the intention of the Department to preclude the provision of services by the BOCs that may not be provided on a competitive basis. As the date of divestiture approaches, if it is not clear that such services may be provided on a competitive basis, the Department will join with the BOCs in seeking a waiver from the Court to permit the offering by the BOCs of such services until such time as it becomes clear that they can be provided feasibly by firms other than the BOCs.

Mass calling or announcement services, such as "dial-it," involve the provision to customers of a capability to acquire certain types of information. Like time and weather, such services are also information services under the proposed modification. These services, however, are today only offered in areas with measured local calling, or which otherwise permit a per-call charge for the service. Again, the BOCs have every incentive to establish payment arrangements to permit economical provision of such services. The comments of Productions-by-Phone, Inc. made specific reference to mass calling equipment already installed by New York Telephone. New York Telephone could continue to provide the specialized local trunking for such services (the "976" exchange) as part of its information access responsibilities under the proposed modification. Such information access could include nondiscriminatory announcements to New York Telephone customers of the recordings provided by the various programmers making use of the 976 service. Any information access must be arranged so that multiple vendors could be provided nondiscriminatory access to the local networking portion of the 976 offering.

Enhanced 911 service involves the provision to public safety agencies of certain information to assist them in responding to emergencies such as residential or business fires. Under this

³⁵ Some comments suggested that equipment such as the switchboard used by telephone answering services could be offered by the BOCs under the modification's emergency services exception, because such equipment may be used in emergency situations. The intent of the emergency services exception however, is not to permit the BOCs to provide equipment that may be used in emergencies, but to permit the provision of equipment by the BOCs in emergency situations when it may be impracticable to obtain equipment from other vendors.

³⁶ Indeed, these services are already available in CPE from non-Bell sources.

service a telephone subscriber would dial 911. The central office would identify the calling number and supply this information to a computer which would then match the calling number with other data in the computer's memory and display that data to the customer, for example, a municipal fire department. This service would clearly constitute an information service since it involves generating and making available information to customers.

The Department is not sufficiently knowledgeable regarding the marketing of this service, however, to know whether it could be offered to public safety agencies under the same terms and conditions by competitive firms. If, as the date of divestiture approaches, it is clear that enhanced 911 service could not be offered by firms other than the BOCs under the same terms and conditions, the Department will join with the BOCs in petitioning the Court for an exception which would permit them to offer such services.

f. Cellular Radio, Land Mobile Radio and Cable Television. Questions were also raised regarding the ability of the BOCs to provide cellular radio, land mobile radio, and cable television services.

As set out in the Department's Competitive Impact Statement, the proposed modification would not prohibit the BOCs from offering either cellular radio or land mobile radio.³⁷ These types of services fall within the definition of exchange telecommunications.³⁸ The provision of cable television service, on the other hand, clearly involves the generation, transformation and conveyance of information and is thus an information service. As noted above, the modification does not limit the technologies a BOC may employ to provide exchange telecommunications. Thus, while a BOC may not provide cable television service, it may provide

the broadband transmission medium necessary for such services to cable television operators.

g. Customer Premises Equipment. The Independent Data Communication Manufacturers Association (IDCMA) expressed concern that the proposed modification might be interpreted to sanction the BOCs as sole suppliers of equipment located on customers' premises used to multiplex, maintain, or terminate access lines. IDCMA's concern arises out of the definition of customer premises equipment, which the BOCs are precluded from providing, and the limitations on BOC activities to exchange telecommunications and exchange access, except natural monopoly services actually regulated by tariff. IDCMA is concerned that these provisions, taken together, might be read to imply that equipment located on customer premises used to multiplex, maintain, or terminate access lines constitute natural monopoly services.

That result is neither intended by the modification nor required by a construction of its terms. The ability of the BOCs to provide such equipment, even though located on customer premises, stems not from any natural monopoly characteristic inherent in its provision, but rather because of its relationship to the provision of exchange telecommunications. As noted above with respect to cellular radio and land mobile radio, the classification of a particular offering as exchange telecommunications is not intended to imply that such offering should be offered on a non-competitive basis.

2. Rational for Restrictions and Effects on BOC Viability. Many comments, including those of a large number of state governments, state public utility commissions and the Federal Communications Commission, raised issues regarding the need for, and likely effects of, the restrictions placed on the businesses in which the BOCs may engage. The following discussion will first address general arguments and concerns raised in the comments regarding the BOC line of business restrictions. The Department will then address several specific issues raised by the comments relating to restrictions on particular lines of business.

As set forth in the Department's Competitive Impact Statement, the purpose of the restrictions is to prevent the reemergence of the incentives and ability to engage in anticompetitive behavior that existed prior to divestiture. This purpose is wholly consistent with the duty of a trial court, after having found a violation of Section 2 of the Sherman Act, 15 U.S.C. 2, to

ensure "that there remain no practices likely to result in monopolization in the future." *United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 250 (1968).

The theory of both the *Western Electric* and *AT&T* cases was that, as a rate base/rate of return regulated monopolist, AT&T has had both the incentive and the ability, through cross-subsidization and discriminatory actions, to leverage the power it enjoys in its regulated monopoly markets to foreclose or impede competition in related, potentially competitive markets. The linchpin of AT&T's monopoly power, the United States alleged, was its ownership and control, through the BOCs, of regulated local exchange monopolies. It was through leveraging of these local franchise monopolies in the markets for intercity services, customer premises equipment and telecommunications equipment. Absent the modification's restrictions on BOC lines of business, the BOCs would have the very same incentives and ability to foreclose or impede competition in related markets. Thus, given the BOCs' continuing status as regulated monopolies, the modification's line of business restrictions are intended to ensure, consistent with the obligations of this Court, "that there remain no practices likely to result in monopolization in the future."

As some of the comments pointed out, the proposed modification goes beyond restricting BOC entry into related or dependent markets, placing a blanket prohibition on the offering of non-exchange access or non-exchange telecommunications products or services that are not natural monopoly services actually regulated by tariff. The Department recognizes that the anticompetitive dangers inherent in the joint provision of regulated monopoly services and unregulated competitive products or services attenuate as the characteristics of the regulated and unregulated markets become increasingly distinct. In the case of the BOCs, businesses that present little opportunity for cross-subsidization from monopoly exchange revenues, because of the absence of common costs and little opportunity for discrimination, would also present little anticompetitive potential. Thus, there would be little danger in permitting the BOCs to engage in businesses wholly distinct from and unrelated to the provision of exchange telecommunications and exchange access. It would be very difficult, however, to draw a workable distinction between those businesses which do not present unacceptable dangers to

³⁷ As the Department also noted, the ability of the BOCs to offer such competitive exchange telecommunications services under the proposed modification should not be taken as an indication of the Department's position with respect to the appropriate role of the BOCs, as regulated monopoly carriers, in the provision of competitive telecommunications services within an exchange area.

³⁸ The BOCs would not, however, be permitted to offer customer equipment associated with the provision of mobile radio since such equipment is a form of customer premises equipment. Some comments questioned the status of Advanced Mobile Phone Service Inc., a separate affiliate which is being formed by AT&T to provide cellular radio services. The Department has been advised by AT&T that, since the BOCs are permitted under the modification to offer cellular radio service, seven separate subsidiaries will be formed, to be owned by the BOCs, to provide such services.

competition and those which do. Moreover, there was no suggestion in the comments that the BOCs would have any interest in entering such unrelated competitive businesses or that there would be any significant public benefit from such entry. Rather, the comments urged that the BOCs be permitted to enter businesses in related markets. Yet, as discussed below, it is in these markets that the anticompetitive dangers of BOC participation are greatest.

A number of commenting parties, including the Federal Communications Commission, several states and state public utilities commissions, argued that the restrictions on the BOCs are actually anticompetitive, since the BOCs are among the most likely entrants into markets where AT&T has, or is likely to gain, a dominant position. These comments argued that the BOCs would be a procompetitive force in these markets because they are in the best position to present a serious competitive threat to AT&T. Entry by the BOCs into these markets, it was argued, would most quickly bring about competitive market structures. It was also argued that permitting the BOCs to compete against AT&T would more quickly sever any remaining ties of loyalty between AT&T and the BOCs and reduce the potential for anticompetitive cooperation among them.

The Department agrees with a basic premise of these comments—that restrictions on entry are generally anticompetitive and deserve the most careful scrutiny. Absent control by the BOCs of regulated bottleneck monopolies, the Department would also agree that any limitation on the businesses in which the BOCs may engage would be unnecessary and unwise. However, as commenters such as the North American Telephone Association, the Associated Telephone Answering Exchanges, the American Newspaper Publishers Association, and the National Cable Television Association pointed out, even after divestiture from AT&T, the BOCs' control over essential local exchange facilities will give them both the power and incentive to disadvantage competitors in related markets through cross-subsidization and discriminatory actions.

Moreover, the competitive value of the BOCs as potential competitors is likely to be slight. As the number of actual competitors increases, the competitive value of additional firms entering the market is reduced. The divestiture required by the modification, together with its equal exchange and information

access provisions, will substantially lower entry barriers and thus encourage entry by other firms into these markets. There are already hundreds of firms which provide customer premises equipment. The BOCs would, of course, have an advantage over other potential competitors by virtue of their control of local exchange facilities. The anticompetitive dangers inherent in such control, however, are precisely those dangers the modification is designed to avoid. In these circumstances, whatever competitive benefits might be gained from the presence of additional firms in these related markets are clearly outweighed by the likelihood of the reemergence of the anticompetitive market structure the modification is designed to end.

Among others, the FCC argued that, even if competitive dangers exist in permitting BOC participation in related markets, they can be adequately protected against by regulatory intervention. More specifically, it has been argued that accounting or quasi-structural regulatory remedies, such as a separate subsidiary requirement for the provision of competitive products and services, would adequately safeguard competition.

While, as discussed below, the Department believes that regulatory mechanisms may have some limited utility in alleviating any transitional potential for anticompetitive conduct on the part of the remaining AT&T, they are not sufficient to control the long term incentives and abilities the BOCs would have to disadvantage competitors in related markets. At the heart of the government's case in *United States v. AT&T* was the failure of regulation to safeguard competition in the face of the powerful incentives and abilities of a firm engaged in the provision of both regulated monopoly and competitive services. If the BOCs, as rate base/rate of return regulated monopolists, were permitted to enter related competitive markets, they would have the means and incentive to disadvantage their competitors by cross-subsidization and discrimination in the terms and conditions of access to the local exchange. Neither of these problems has thus far proven amenable to successful regulatory solution. Indeed, the very basis for divestiture is that the anticompetitive problems inherent in the joint provision of regulated monopoly and competitive services are otherwise insoluble. Thus, permitting BOC entry into competitive markets would undermine the rationale for the divestiture that is the central remedial mechanism of the modification.

With respect to cross-subsidization, as Leghorn Telepublishing Company, among others, pointed out, the FCC struggled for more than 20 years unsuccessfully to solve the problem of allocating common costs between competitive and non-competitive services. This very same problem would confront regulators if the BOCs were permitted to engage in competitive lines of business. There is simply no single correct formula for the allocation of such common costs among services. Moreover, even if such a formula existed, the possession by the BOCs of relevant cost information, the extent of common costs, and the high degree of discretion in the treatment of such costs enjoyed by the BOCs, would very likely frustrate meaningful regulatory oversight, especially in light of strong incentives on the part of the BOCs to do so.

Nor is it likely that regulation could effectively ensure non-discriminatory access to essential local exchange facilities. Again, as a number of commenters pointed out, this is a subject that has preoccupied regulation for more than a decade with little success. Particularly in a technologically dynamic industry such as telecommunications, there is little possibility that regulation is capable of detecting or preventing the very subtle forms of discrimination that would be available to the BOCs. Thus, even were it possible to prescribe in detail the appropriate technical parameters of interconnection under current technological conditions, regulators would have to have sufficient foresight to determine in advance the discriminatory potential inherent in tomorrow's technology, effectively to ensure fair competition. Even if it were possible, moreover, effectively to monitor the technical aspects of interconnection in an evolving technological environment, there would remain still more subtle means of discrimination in operational activities, such as the timely provision, maintenance, testing, and restoration of facilities. In short, the BOCs, if permitted to engage in competitive activities, would have substantial ability to frustrate regulatory attempts to prevent discriminatory conduct.

A regulatory requirement that competitive products or services be provided through a separate subsidiary, like regulatory proscriptions against anticompetitive pricing and discrimination, would not affect the incentives to engage in anticompetitive

conduct. The FCC recognized this fact in its *Second Computer Inquiry* decision:³⁹

A separate subsidiary requirement, from a purely structural perspective, does not guarantee a competitive market-place because it does not significantly change the incentives of a firm upon which it is imposed. The requirement does not impart an incentive to operate the subsidiary in a manner that would detract from the overall profitability of the parent corporation. Thus, in general, if the parent has an incentive to exercise its market power to the disadvantage of consumers and competitors in the absence of a separate subsidiary, it has the same incentive to do so after one is required.

The purpose of such a requirement, therefore, would be to circumscribe the ability of firms to act in accordance with their incentives. While the Department believes that a separate subsidiary requirement may eliminate some of the potential avenues for anticompetitive abuse, it cannot effectively foreclose all of the ways in which the BOCs could discriminate in favor of a separate affiliate providing competitive products and services.

In addition to the danger of cross-subsidization which would arise from any permitted joint use of assets, facilities, or personnel between the BOCs and any separate affiliates, all of the potential for discriminatory treatment discussed above would also exist. Thus, even assuming sufficient cost separation between a BOC and its separate affiliate to prevent cross-subsidization, the BOC would still have available numerous opportunities for discrimination in the terms and conditions of access to facilities which are essential for the provision of competitive services.

Several comments, particularly those submitted by state regulators, expressed concern that restricting the BOCs to the provision of exchange telecommunications and exchange access will threaten their viability or cause increases in local rates.

As set forth in the Competitive Impact Statement, a principal focus of the Department's review of the plan of reorganization will be the financial and technical integrity of the divested BOCs, unless the BOCs. The Department believes, however, that the inability of the BOCs to engage in certain competitive activities will not adversely affect either the ability of the BOCs to operate in a sound financial manner or the level of local rates.

As to financial and technical viability, as discussed above, in its review of the

plan of reorganization the Department will ensure, consistently with Section I of the proposed modification, that the BOCs are transferred sufficient assets, facilities, personnel and other resources to permit them efficiently to engage in the provision of exchange telecommunications and exchange access. The Department will also examine the proposed financial structures of the BOCs to ensure that they reflect a prudent mix of debt and equity and an embedded cost of debt comparable to the embedded cost of debt to the Bell System as a whole.

Under established regulatory principles,⁴⁰ regulated firms are entitled to earn a return on assets dedicated to the provision of regulated services sufficient to recover the costs of both debt and equity to the regulated enterprise. Sound application of these principles by regulatory agencies to the BOCs will ensure both the ability to recover all of the costs of providing exchange telecommunications and exchange access and the continued ability to attract capital. The inability to offer other products and services which also must recover their costs and continue to attract capital bear no relation to the viability of the basic business of providing exchange telecommunication and exchange access.⁴¹

The argument was also made in the comments that, while it is in the province of state regulators to assure the financial viability of the BOCs are permitted to engage in competitive enterprises, local rates will have to rise to permit the BOCs to recover their costs and continue to attract capital. While it is not clear in every case, the premise of this argument appears to be that the provision of competitive products and services will return to the BOCs revenues in excess of costs, including the cost of capital, and thus provide a subsidy to local rates. The argument thus appears to assume that the BOCs will be able to earn above competitive profits in the provision of competitive products and services.⁴² If this were to

occur, it would indicate that the BOCs were in fact abusing the monopoly power inherent in control of the local exchange bottleneck to disadvantage their rivals in other markets. This is precisely the outcome the modification is designed to avoid.

A number of comments also expressed concern regarding the absence of any time limit on the BOC line of business restrictions. Some have suggested that in the absence of limitations on the duration of the restrictions, as technology changes, the modification will have unintended anticompetitive consequences by needlessly restricting entry.

The Department believes that these concerns are valid. As discussed above, the basic premise underlying the restrictions is that exchange telecommunications is a bottleneck monopoly to which non-discriminatory access is necessary to ensure competitive conditions in related markets. It is quite possible that, as technology evolves, the rationale for the restrictions will erode as the BOCs lose the ability to disadvantage competitors in these markets. As set out in its Competitive Impact Statement, the Department intends to review carefully the continuing need for the restrictions. In order to ensure that the Court is fully apprised of developments in this area, the Department will undertake to make a formal report to the Court on the continuing need for the restrictions on the third anniversary of the date of divestiture, and every third year thereafter so long as the restrictions remain in force. In the event that the Department concludes in its report that the state of competition and technology is such that any or all of the restrictions should be lifted, it will move the Court for a modification of the Judgment to permit such activity by the BOCs. The Department believes that this procedure will assure both continuing scrutiny of the factors underlying the restrictions and, as well, limit the duration of the restrictions to the minimum period required by the state of technology and competition.

Several comments raised arguments with respect to particular restrictions on the BOCs. The following discussion addresses the limitations on the BOCs ability to participate in the markets for

revenues from the provision of CPE exceeded relevant costs. On the other hand, comments received from a number of other parties, including comments submitted by nine Western state public utilities commissions, argued that CPE has historically been under-depreciated, or sold below cost, and thus, that transfer of such equipment to AT&T would enhance the viability of the BOCs.

³⁹ In the Matter of Amendment of Section 64.702 of the Commission Rules and Regulations (Second Computer Inquiry), Docket No. 20828, 77 F.C.C. 2d 384, 462 (1980).

⁴⁰ See, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

⁴¹ As a theoretical matter, in the event that demand for exchange telecommunications and exchange access disappeared, regulators would be unable to ensure BOC viability. Of course, long before this possibility could occur, the BOCs would have lost their status as monopoly bottlenecks and the Department would have moved for a modification of the Judgment to remove restrictions on BOC activities. As discussed below, the Department intends to pay careful attention to changing technological and competitive conditions to ensure that the restrictions do not outlive their utility.

⁴² With respect to customer premises equipment, for example, a number of comments asserted that

interexchange services, information services, customer premises equipment, and directory advertising.

a. *Intrastate Interexchange Services.* Some comments, particularly those submitted by state governments and state regulatory agencies, argued that the BOCs should be permitted to offer intrastate interexchange services. In addition to arguments already discussed, it was argued that since intrastate toll is by and large not now competitive, there is no rationale for not permitting the BOCs to provide it. Some comments also argued that permitting the BOCs to offer interexchange services would provide a built-in phase-out period for their involvement in that market because intrastate toll rates are priced above cost. According to these comments, the pricing of intrastate toll would invite entry which would eventually drive the BOCs from the market. One implicit premise of this argument is that state regulators would not permit the BOCs to charge cost-based rates.

The Department recognizes that in many states interexchange services are not currently provided on a competitive basis. The purpose of the proposed modification, however, is not merely to preserve and enhance competitive prospects where some competition already exists, but to create a market structure conducive to competitive entry and fair competition wherever technologically and economically feasible. As discussed above, the rationale for restricting BOC entry is to prevent the reemergence of incentives and abilities to frustrate competition in actually or potentially competitive markets. If the BOCs were permitted to enter potentially, but not actually, competitive markets they would be vested with the incentive and opportunity to ensure that such markets never become competitive.

The same rationale applies to the argument regarding the phase-out of BOC competitive operations. If, as assumed, intrastate toll rates are priced above costs, the incentive of the BOCs to blockade entry by discriminatory actions is increased, since even less efficient firms would be able to undercut BOC rates and capture market share.⁴³

⁴³ A number of comments argued that whatever anticompetitive dangers are inherent in BOC participation in interexchange service, they may be overcome by effective regulatory oversight. While these arguments have been addressed above, it may be useful to point out that the provision by the BOCs of interexchange services would present the danger of both cross-subsidization and discriminatory treatment. Neither of these competition problems has proven amenable to effective regulatory monitoring.

A number of comments suggested that, irrespective of the competitive rationale for restricting entry, the BOCs should be permitted to offer interexchange services in order to maintain the contribution that intrastate toll service makes to local telephone rates. Implicit in this argument is an assumption that competition in intrastate interexchange services will drive prices down and reduce or eliminate any contribution that intrastate toll service makes to the costs of providing local exchange service. As discussed above, however, the modification does not disturb the authority and discretion of the states to allocate costs among the services provided within their jurisdictions. Thus, any contribution the states deem appropriate to help defray the common costs of providing exchange and interexchange services may be recovered by the BOCs through intrastate access charge tariffs that differ from the access tariffs for interstate services.

b. *Information Services.* Many of the comments that discussed the prohibition against the BOC's offering of information services expressed the concern that demand for new and innovative services and technologies would not be met without BOC participation. The United States Independent Telephone Association (USITA), for example, questioned whether the restriction would result in a situation in which "enhanced services" may be enjoyed by the Independents' customers but not those served by the BOC.⁴⁴ USITA and others also expressed concern that, by limiting the activities in which the BOCs may participate, their incentive to introduce new, less costly technologies into the local exchange would be impaired. The California Public Utilities Commission suggested that the restriction on the offering of information services by the BOCs would be inefficient to the extent that such services may be provided using facilities in common with those used to provide exchange telecommunications.

As discussed earlier, it is not the intention of the Department to foreclose the offering of services that can only be economically provided by the BOCs. The Department does not believe, however, that the ban on BOC provision of information services will lead to such a result.

USITA's concern that customers of BOCs would be deprived of services enjoyed by customers of independent

⁴⁴ Comments of the United States Independent Telephone Association at 12.

telephone companies would only be realized if the cost characteristics of providing such services were such that they could only be economically provided in conjunction with the provision of local exchange service. There are currently, however, a number of companies that provide a variety of information services that are viable apart from the provision of exchange telecommunications. The firms that provide information services must, however, rely on access to local exchange facilities under the ownership and control of the BOCs. As commenters such as the American Newspaper Publishers Association and the Association of Telephone Answering Exchanges point out, if the BOCs were permitted to offer information services they would have the power and the incentive to deter the development of competitive markets for these services. The Department, therefore, continues to believe that the BOCs must be precluded from engaging in such activities to ensure the development of competitive markets for information services.

With respect to the incentives of the BOCs to introduce new technologies into the local exchange, the Department believes that the modification will not have the effect of dampening incentives for technological innovation, but rather will enhance such incentives. In combination, the divestiture required by the modification and its information access provisions will enhance competition in the markets for information services. As such competition evolves, new demands will arise for new and innovative methods of local distribution. The modification does not place any limitations on the BOCs' ability to respond to such demands. Indeed, it should be expected that the BOCs will respond energetically to such demands as a means of generating revenue. In addition, because the modification does not place any restrictions on the ability of information services providers to construct their own distribution facilities, the BOCs will have an additional incentive to introduce new technologies in the local exchange simply to retain business.

The California Public Utilities Commission argued that the modification might, under some circumstances, prohibit the BOCs from making the maximum efficient use of facilities used to provide local exchange services. It is possible to conceive, for example, of using a portion of the capacity of electronic switches to perform functions integral to the provision of information services. It is

this very possibility, however, which presents the greatest anticompetitive potential, since the BOCs would have tremendous discretion in the allocation of the common costs of switching capacity between the provision of competitive information services and regulated exchange telecommunications.

Moreover, permitting the BOCs to offer information services that make use of equipment that is used in common with the provision of regulated exchange telecommunications would simply create an incentive for the BOCs artificially to design information services to make use of such capacity, whether or not such common use would be dictated by the economic characteristics of the service. Because of the complex technical and cost characteristics of these kinds of decisions, the discretion of the BOCs in this regard would be effectively unreviewable by regulatory agencies. The modification would not prohibit the BOCs, however, from leasing any excess capacity in their switches to information services providers, so long as such arrangements do not result in an economic integration with those providers or have the effect of violating the modification's non-discrimination requirements. Because of the anticompetitive potential inherent in such arrangements, the Department will subject any such activity to the closest scrutiny. The Department believes, therefore, that the modification's restriction on the provision of information services will not adversely affect the efficient utilization of BOC facilities.

c. Customer Premises Equipment. A large number of comments, particularly those of state governments and state public utility commissions, raised issues regarding the advisability of restricting the provision of customer premises equipment by the BOCs. A number of comments suggested that there is no competitive rationale for restricting the BOCs from either the manufacture or sale of customer premises equipment. Most of those commenting on this issue argued that the BOCs should at least be permitted to market customer premises equipment, because the FCC's registration program largely eliminates any possibility of discriminatory treatment in the interconnection of CPE.⁴⁵ Others argued that the FCC's *Second Computer Inquiry* decision, which requires the new CPE be marketed through a separate subsidiary,

would be sufficient to guard against the danger of cross-subsidization of CPE with local exchange revenues.

The Department recognizes that FCC actions regarding the interconnection of CPE to the network over the past decade have reduced or eliminated a number of significant competitive problems in this area. For example, the FCC registration program would forbid the BOCs from denying interconnection to equipment that meets specified technical requirements.

Deregulation of CPE and a requirement, such as the FCC's, that AT&T provide CPE through a separate subsidiary, would also reduce the potential for cross-subsidization.

In spite of these actions, however, the Department continues to believe that the anticompetitive potential inherent in the provision of CPE by the BOCs outweighs any benefits that might be gained from such provision. Despite an inability to ban interconnection of CPE to their lines, the BOCs, if permitted to engage in its provision, nonetheless would retain significant opportunities to disadvantage interconnection of CPE by their competitors. While this potential is probably limited with respect to the most simple interconnection of equipment such as customer handsets, it is significantly greater with respect to the connection of more sophisticated equipment, such as customer premises switching equipment, which requires more detailed planning and ongoing provider involvement.

With respect to interconnection of such sophisticated equipment, the BOCs would have substantial opportunities to discriminate between their own offerings and those of their competitors as to such matters as the type and quality of interconnection facilities, timing of cutovers, and testing and maintenance. Neither a separate subsidiary requirement nor the FCC's registration program would be sufficient protection against the potential for such discrimination. Moreover, because of the highly complex nature of such interconnection, regulatory monitoring of BOC discretion in this area would likely be ineffective.

While, as discussed above, the same degree of anticompetitive potential may not exist with respect to less sophisticated types of interconnection, it would be difficult to draw a viable distinction between those types of CPE that pose an unacceptable degree of competitive danger from those that do not. Even if such a distinction could be drawn, moreover, it is not apparent that either the BOCs or their customers would benefit significantly from the

ability to provide a limited class of such equipment.

Some of the comments argued that the BOCs should be permitted to offer CPE in rural areas, on the ground that other vendors may not have the incentive to provide CPE in such areas. Customer premises equipment, however, is already provided by hundreds of companies. Basic telephone handsets are marketed through thousands of retail outlets, including general purpose outlets that provide other small home appliances. Indeed, such equipment may be ordered through mail order catalogues. It thus does not appear to be a realistic possibility that foreclosure of the BOCs from this market will deprive rural customers of access to basic customer premises equipment.

Other comments argued that the BOCs should be permitted to market specialized equipment, such as CPE for deaf or otherwise handicapped persons. Again, the premise of the argument appears to be that there would be an insufficient market after divestiture to interest other vendors in the provision of such equipment. The Department is not sufficiently familiar with the market for such equipment to know whether it would likely be provided under the same terms and conditions in the absence of BOC supply. It may be, for example, that such products are currently provided by the BOCs below cost and financed out of revenues derived from the provision of other products and services. The Department will undertake to investigate this issue. If it is the case that below-cost offerings of such equipment are financed with general ratepayer revenues, and if no other reasonable alternatives are available, the Department will move the Court for an exception to the modification's restriction on the offering of such specialized customer premise equipment.

A number of comments, particularly by state commissioners and some CPE manufacturers, urged that the BOCs be permitted to retain embedded customer premises equipment until fully depreciated to minimize customer disruption.⁴⁶ It was also argued that requiring transfer of embedded CPE to AT&T would conflict with the FCC's *Second Computer Inquiry* decision under which embedded CPE would remain regulated by tariff.

It should be emphasized that the modification cannot (as some comments

⁴⁵ Some made the suggestion that BOCs be permitted to market customer premises equipment, but that manufacture of such equipment be prohibited for some period of time.

⁴⁶ Some comments argued that the BOCs should retain embedded CPE to prevent AT&T from continuing its migration strategy. This issue is addressed in Section V (E).

appear to assume) cause the deregulation of CPE.⁴⁷ Thus, after divestiture, while embedded CPE will be the responsibility of AT&T rather than of the BOCs, it will continue to be subject to the respective jurisdictions of the states and the FCC. Moreover, the Department does not believe that transfer of embedded CPE to AT&T will cause significant customer inconvenience. Responsibility for maintenance of existing CPE will merely be transferred from the BOCs to AT&T. Indeed, AT&T will have every incentive to ensure a smooth transition to avoid losing customers.

Under the FCC's *Second Computer Inquiry* decision, the BOCs would have the ability to continue to furnish refurbished CPE and lease CPE out of inventory. Thus, if the BOCs were permitted to retain embedded CPE, they would have an incentive to discriminate against the CPE offerings of their competitors. The Department believes that, balancing these considerations, customers will be better served by transfer of all CPE assets from the BOCs to AT&T.

Some comments argued that AT&T (or the BOCs if permitted to retain embedded CPE) should be required to offer customers the opportunity to purchase embedded CPE at book value, or at a regulatorily determined price. The Department understands that some state commissions, including California, are considering giving customers the option of purchasing embedded CPE as a means of deregulation. The Department believes this is a matter of regulatory prerogative. The modification would neither prohibit nor require such action.

d. *Yellow Pages*. A large number of comments addressed the status of directory advertising—"Yellow Pages." Almost without exception, these comments objected to the modification's restriction on the ability of the BOCs to engage in the provision of directory advertising. Many comments argued that the restriction would deprive the BOCs of revenue currently used to help defray the costs of providing other services. Others argued that all aspects of Yellow Pages directory advertising are integral to BOC operations and should be considered a part of exchange telecommunications.

In its Competitive Impact Statement, the Department stated that the BOCs would retain the rights inherent in their files of telephone subscribers, including machine-readable listings and copyright

interests in printed alphabetical directories. The BOCs, therefore, would have the right effectively to auction off the Yellow Pages "franchise" to the highest bidder. As a consequence, the Department stated, the BOCs would have the ability to retain all of the above-competitive profits that are presently derived from provision of the Yellow Pages. Many of the comments questioned whether this was so, expressing doubt, in particular, that the machine readable listings could account for all of the above-competitive profits currently associated with Yellow Pages.⁴⁸

The Department's subsequent analysis of the issue suggests that there may indeed be reason to doubt whether franchising could recover all present above-competitive Yellow Pages revenues. It continues to appear, however, that the BOCs would be able to extract, by means of franchising, a significant fraction of their present Yellow Pages net revenues, although it is not possible to know just how high the fraction might be, or, indeed, to determine just what the net revenues now are. Moreover, it continues to appear that the provision of directory advertising is, or can be, competitive. The provision of such services by the BOCs, however, will give them the incentive to disadvantage others in the provision of directory advertising, both in its current printed format, and, more importantly, in electronic form. Accordingly, despite the indeterminate revenue effects, the Department continues to believe that the rationale for excluding the BOCs from the provision of Yellow Pages is, in principle, correct.

D. By-pass of BOC Facilities by AT&T

A number of commenting parties noted that the modification does not place any restrictions on AT&T's ability to construct its own local distribution facilities. Among those commenting on this issue were several state commissions, NARUC, and a number of carriers which compete with AT&T in the provision of intercity services. These comments generally expressed concern that by-pass of local exchange facilities by AT&T would siphon off BOC revenues and necessarily result in increases in either local exchange rates, charges for exchange access, or both. Several of those commenting urged that AT&T be prohibited from constructing such facilities indefinitely, or at least for

a period of time sufficient for the BOCs to establish their financial viability.

The Department recognizes that a necessary effect of such by-pass by AT&T, as well as others, would be to divert demand for local distribution from the BOCs to other firms, with consequent pressure on BOC revenues. The likelihood of such by-pass, as recognized by some commenters, is directly related to the level of charges for access to the BOC's local distribution facilities. As discussed above, the level of such charges is a matter within the purview of state and federal regulatory bodies. The extent to which such by-pass becomes economically attractive to AT&T and others, therefore, will largely be determined by regulatory policy regarding the appropriate level of access charges.

As some commenting parties noted, a number of firms, including intercity competitors of AT&T, have applied for authority to construct alternate local distribution systems, such as digital termination service. Precluding AT&T, therefore, from constructing its own facilities would place a burden on AT&T not shared by its competitors.

The Department believes that a ban on the provision by AT&T of local distribution facilities would needlessly restrict entry into the market for local distribution services and unnecessarily prolong the status of the BOCs as monopoly bottlenecks and, therefore, also the need for restrictions on the businesses in which the BOCs may engage.⁴⁹

III. Issues Relating to the Definition of Exchange Areas and Effects on Independent Telephone Companies

A. The Meaning of "Exchange Area"

A number of comments raised issues which indicate some confusion regarding the meaning of the terms "exchange" and "exchange area" as used in the proposed modification. Some of these comments appeared incorrectly to equate the term "exchange" as used in the modification with the same term's traditional usage by the FCC, state commissions and telephone companies, with resulting confusion as to the modification's intended consequences. The Rural Telephone Coalition suggested, in order to eliminate any misunderstanding, that the modification

⁴⁷ See discussion in Section V (E), with respect to possible need to modify regulatory statutes in certain states.

⁴⁸ The Department notes in this connection that AT&T has publicly stated its intention to guarantee the BOCs' revenue from the provision of directory advertising for four years.

⁴⁹ In addition, it should be noted that the modification does not affect the jurisdiction of the state or of the FCC to regulate the construction of local distribution facilities. Thus, whether or not AT&T will actually be permitted to construct such facilities is a matter committed to regulatory authority.

be amended to use a different term to express the exchange area concept, such as the acronym "LATA" (Local Access and Transport Area) developed by AT&T.

The Department of Justice does not believe that it is necessary to amend the modification for a proper understanding of the exchange area concept. The definition of exchange area is unambiguously stated, and, in addition, is an integral component of other concepts in the modification, such as "interexchange telecommunications" and "exchange access."

The concept of an exchange area in the modification serves two purposes. First, it designates a geographic area that defines the limits of the serving responsibilities of the BOCs and represents the corresponding dividing line for the division of assets between AT&T and the BOCs. Second, it defines the boundaries of the exchange access obligations placed on the BOCs. The exchange area concept does not, nor is it intended to, diminish a state's regulatory authority to establish rate structures such as those which currently define local calling areas or extended area service plans. For example, even if an exchange area boundary divided a local calling area or extended area service plan region, a state commission could require that access charge tariffs for affected traffic be structured in a manner to maintain the existing rates for such traffic.

B. Criteria for Determining Exchange Areas

The Ad Hoc Telecommunications Users Committee asserted that the proposed modifications should contain precise standards for creating exchange areas, standards which would directly relate the establishment of exchange boundaries to competitive conditions. According to the Ad Hoc Committee, the modification is based upon the premise that interexchange service is potentially competitive. The committee, therefore, argued that the Department should be guided by the likelihood of competitive entry in establishing exchange boundaries. The Ad Hoc Committee suggested that standard metropolitan statistical areas (SMSAs) and state boundaries represent political divisions that often bear no relationships to the resources used to provide telecommunications services. It argued, in addition, that Class 4 switching offices do not represent an appropriate delineation of exchange boundaries because Class 4 and 5 offices frequently share the same switching machine, and in many high traffic metropolitan areas interexchange toll service may be

furnished on direct routes between Class 5 offices. The Committee, therefore, recommended that economically integrated metropolitan areas be treated as single exchange areas without regard to state boundaries, Class 4 offices, or SMSAs.

Other issues relating to the SMSA criterion were raised by commenting parties such as the California Public Utilities Commission which suggested that the limitation on exchange areas to one SMSA should be waived for adjacent, relatively low population SMSAs and that the BOCs should be permitted to provide service in areas consistent with current local calling areas even if such areas cross state boundaries or SMSAs. The Haviland Telephone Company in joint comments with six other independent telephone companies in Kansas, urged that the exchange area definition be modified to remove the limitation of one SMSA per exchange area, to preclude AT&T from taking the profitable intrastate interexchange routes from the BOCs and to preserve the economic viability of the BOCs.

The Department of Justice continues to believe that the criteria specified in the modification for the establishment of exchange areas constitute a workable, comprehensive framework for defining exchange areas consistent with the modification's goals. The primary objective of the exchange area concept is to separate competitive, or potentially competitive intercity services, from the bottleneck local distribution function. In defining an appropriate dividing line between these functions, the modification takes a somewhat broader view of the local distribution function than currently established local calling areas for flat rate or message unit telephone service. As a result of the significant economies available in the concentration of traffic before it enters the toll network, the modification treats the local distribution function as continuing to the first point (or points) of concentration of such traffic. For purposes of the division of assets between AT&T and the BOCs, this first point of concentration is regarded generally as the AT&T Class 4 office.

The modification's definition of exchange area also takes the existence of contiguous areas of common social and economic interest into consideration. Thus in its review of the plan of reorganization, the Department will seek to ensure that to the maximum extent possible, such areas are included within a single exchange area. In reviewing the plan's formulation of exchange areas, the Department will

also take into consideration the current configuration of facilities. Thus, for example, traffic arrangements which involve direct trunking between Class 5 end offices may suggest that these end offices should be within a single exchange areas. On the other hand, there may be direct trunking arrangements between Class 5 end offices involving two major metropolitan areas between which intercity competition exists or is highly likely. In these circumstances, exchange areas should be arranged so that the metropolitan areas are located in separate exchange areas. Finally, the modification intends, to the maximum extent possible, to leave intact local calling areas and other regulatory boundaries.

In separating intercity services from the local distribution function, in most cases the appropriate geographic delineation is the standard metropolitan statistical area (or consolidated statistical area for densely populated states). Other considerations, however may dictate exceptions to the general rule. Thus, for example, social or economic considerations in a particular situation might indicate that an exchange area should include two or more SMSAs or cross a state boundary. In such circumstances, the Department intends to apply to the Court for exceptions to the modifications to the modification's general standards. In addition, the Department would recommend to the Court that exceptions be permitted in cases involving two adjacent, relatively small population SMSAs, and in cases where local calling areas presently cross state lines or where common facilities presently serve parts of different states. In cases where two SMSAs are combined into a single exchange area, however, the Department of Justice may condition its recommendation to the Court on an agreement by the BOCs that equal access will be provided to other carriers for service between the two SMSAs (*i.e.*, as if the two SMSAs were in separate exchange areas). As discussed above, even where exchange area boundaries may be drawn in a manner inconsistent with current local calling areas, the modification leaves undisturbed the jurisdiction of the states to prescribe rate structures that preserve existing pricing patterns. Moreover, where local calling areas cross an appropriately drawn exchange area boundary, the Department would not necessarily object to calls within that local calling area being treated as if they were intraexchange traffic; *i.e.*, exchange area

boundaries may overlap slightly in appropriate circumstances.

C. Implications of Size of Exchange Areas

Some of the comments raised issues concerning the relationship between the size of the exchange areas established under the modification and the resulting effect on existing or potential competition. Comments submitted by Southern Pacific Communications Company ("SPCC"), for example, state that the possibility for the creation of large exchange areas creates ambiguities as to the anticipated role of interexchange carriers in providing service between points within the same exchange area, since the BOCs would not be required to provide access to other carriers for intraexchange service. SPCC asserted that this represents a reassignment of responsibility for providing what is today interexchange service, and that carriers like SPCC might be excluded from a portion of the current interexchange market. SPCC further requested that the modification be amended by requiring the BOCs to provide access to other carriers for both intraexchange and interexchange services. Similar concerns were expressed in the comments filed by MCI.

The Washington County Coalition for Better Phone Service also expressed concern that exchange areas might cover too large a territory. The Coalition stated that New England Telephone has indicated its intention to establish only one exchange area in Rhode Island, to cover the entire state. It was argued that this will eliminate the prospect for intercity competition within Rhode Island, and thus deprive Rhode Island of the lower rates and high quality service resulting from competition.

On the other hand, some comments expressed concern that exchange areas might be too small. The New Jersey Board of Public Utilities urged that exchange areas be drawn in a manner consistent with common economic, social and political interests, and that they be large enough to retain a significant portion of existing intrastate toll and message unit revenues, to alleviate upward pressure on basic monthly service rates.⁵⁰ The Western Union Telegraph Company was concerned that AT&T might use its remaining period of control over the BOCs to reduce the size of exchange areas, increase their number, and thus increase the burden on other carriers

attempting to establish nationwide systems to compete with AT&T.

The Department of Justice believes that the modification as currently written takes into account the various concerns raised in the comments regarding the size of exchange areas. With respect to the concerns that exchange areas may be drawn too large, the modification's basic limitation that an exchange area not contain more than one SMSA generally assures that interexchange carriers will have access to the entire intercity services market and, contrary to SPCC's assertions, will not be prevented from serving any part of what is today considered interexchange service. Nevertheless, in any particular case where a single exchange area includes two metropolitan areas between which the appropriate regulatory commission permits competition, the regulatory commission is free to make the modification's equal access provisions applicable to intraexchange service, or even to prevent the BOCs from serving certain routes. Similarly, in cases where two SMSAs are included within a single exchange area, as noted earlier, the Department may condition its recommendation that the Court approve an exception on an agreement by the BOCs to provide intraexchange access to traffic between the two SMSAs. The Department believes that these criteria will assure the development of markets and, in addition, assure that competitive interexchange service will be available even to sparsely populated areas, since these areas will be within the exchange access obligations of the BOCs.

With regard to the concerns that exchange areas may be drawn too small, the Department of Justice believes that the modification largely eliminates this possibility. As discussed in the Competitive Impact Statement, as a general proposition an exchange area should not be smaller than the geographic region currently served by an existing AT&T Class 4 office. This permits the local distribution function to continue to the first point of concentration of interexchange traffic, and at least encompasses the area served by an existing local exchange area.

D. Subzones and Access Charges

The Southern Pacific Communications Company expressed some confusion regarding the term "subzone" in the modification. SPCC argued that interexchange carriers with a terminal in an exchange area should be permitted to serve any and all subzones within that exchange area. SPCC further argued that

access charges should be related to subzones and that if a carrier locates a terminal within a subzone to serve only that subzone, access charges should reflect only the cost of that specific access.

The use of the term "subzone" in the modification relates solely to the cost of transporting traffic from all the end offices in an exchange area to the particular point or points designated by the interexchange carrier for connection of its facilities with those of the BOC, and does not apply to other services provided as part of exchange access. Subzones therefore relate only to a portion of the exchange access charges. As described in the Competitive Impact Statement, the purpose of the subzone concept is to ensure that until September 1, 1991, charges for transporting the traffic from end offices are equal for all interexchange carriers whose facilities are located within the same subzone, per unit of traffic delivered or received.

The subzone concept does not operate at all to limit the portions of an exchange area that an interexchange carrier is permitted to serve. Under the modification, the BOCs are required to provide exchange access which permits an interexchange carrier to serve every end office throughout the exchange area, from a single point (or a number of points) designated by the interexchange carrier. Beyond this requirement, however, nothing in the modification prevents a BOC from, in addition, offering exchange access to a limited group of end offices within an exchange area if an interexchange carrier only requests service to and from such limited group of end offices.

E. Effects of Exchange Areas on Independent Telephone Companies

A number of comments sought clarification of the effect of the exchange area concept on the independent telephone companies, including the intended role and degree of participation of the independents in the determination and operation of exchange areas. Some independent telephone companies stated that they have been asked by AT&T and the BOCs to decide whether or not they wish to be included in a particular exchange area established under the modification which surrounds, or may be drawn to encompass, their serving territory. The independents view this as an important decision which could have a significant impact on their financial viability and the economic well-being of their customers. They stated that they have been unable to reach an informed

⁵⁰ The New Jersey Board agreed, however, with the criteria relating to SMSAs and consolidated statistical areas.

decision, however, because they have not been given sufficient information by AT&T and the BOCs concerning the effects of alternative decisions.

A number of the independent telephone companies submitting comments raised specific issues regarding the effects of the exchange area concept on current arrangements, services and facilities such as: existing independent-BOC traffic agreements; exchange service revenues and expenses; message toll telephone service substitutes (e.g., extended area service and optional toll calling plans); continuation of joint and through rates and services; division of revenues for joint and through services (both interexchange and intraexchange); and joint tariffs, including the consequences to an independent within an exchange area of not agreeing to a joint tariff with the BOC. The Rural Telephone Coalition also sought clarification of whether higher cost independent service areas within an exchange area will be assigned separate access charges as a part of a subzone.

The modification neither intends nor requires that existing functional and operational relationships between the BOCs and the independents be disturbed. The need for AT&T and the BOCs to divide the ownership of various assets between them does not require an immediate decision by independents whether to be included in an exchange area established under the modification. With respect to those independents for whom toll access is provided through an existing AT&T Class 4 office, the Bell System assets will be divided as if the independent's Class 5 offices were BOC Class 5 offices. A decision by an independent telephone company not to be included within an exchange area will not by itself require treating the local exchange traffic between an independent and an adjacent BOC as interexchange traffic. Nor would such a decision affect the ownership of any independent telephone company facilities. This approach is consistent with the views of the Rural Telephone Coalition.

If an independent telephone company chooses to join in the access charge tariffs filed by the BOC, such tariffs would cover the costs associated with providing access to all of the independent company's serving territory. The modification would not disturb the ability of the BOC and independent telephone company to work out appropriate financial arrangements, subject to appropriate regulatory oversight. In the event that an independent telephone company decides

not to join in an access charge tariff with the BOC, separate arrangements will have to be worked out between that company and interexchange carriers for the delivery of interexchange traffic. Such a decision need not affect the character of the traffic between an independent and an adjacent BOC.

While the division of assets between AT&T and the BOCs does not depend on an independent telephone company's decision to be included within an exchange area, many independents will have to reach a decision on this matter for purposes of making financial arrangements with AT&T and the BOCs. The modification does not affect the ability of independent telephone companies to make these decisions based upon an assessment of their own operations and needs.

F. Ability of Independent Telephone Companies to Engage in Joint Activities with BOCs

A number of comments raised questions regarding the effects of the modification on the ability of independent telephone companies to engage in certain activities with the BOCs. Central Telephone & Utilities Corporation, for example, urged that independent telephone companies be permitted to acquire BOC assets or territories. Similarly, USITA suggested that minor transfer of BOC territory or facilities to independent telephone companies should be permitted.

The modification, under Section III, is binding upon the "BOCs, their affiliates, successors and assigns." As a result, any company, including an independent telephone company, purchasing a BOC or its franchised territory or facilities, would be bound by the restrictions of the modification and thus would not be permitted to engage in activities that the BOC could not perform. This restriction is necessary in order to prevent circumvention of the modification by a mere transfer of ownership. Of course, if a minor transfer of territory or facilities is involved and there is good cause for relieving the purchaser of the modification's restrictions and obligations, the purchaser may apply to the Court for appropriate relief.

Other comments questioned whether the modification would forbid joint ownership of facilities by BOC's and independents as well as with AT&T. The Virginia State Corporation Commission, for example, urged that BOCs should not be restricted from entering into joint ownership or sharing arrangements with independent telephone companies or with interexchange carriers.

Paragraph I(A)(2) of the proposed modification precludes the joint

ownership of facilities by the BOCs and AT&T. However, neither that paragraph nor any other specifically addresses whether joint ownership by BOCs and independent companies is permitted. The answer to the question is therefore dependent upon whether such joint ownership would result in an arrangement causing the BOC to violate other requirements of the modification.

Under paragraph II(C)(1) of the proposed modification, a BOC is precluded from providing interexchange telecommunications or information services either directly or through an affiliated enterprise. Consequently, the joint ownership by a BOC and an independent carrier of facilities used in whole or in part to provide interexchange services would be prohibited under the modification. In contrast, the modification would not preclude joint ownership with an independent telephone company of purely exchange facilities.

The lease or other sharing of facilities by a BOC and an independent is also not specifically addressed in the proposed modification. Again, whether or not such sharing would be permitted depends upon whether it would result in a conflict with any of the modification's restrictions on BOC activities. If the shared facilities are to be used in whole or in part for exchange or exchange access functions, and if the participation of the BOC in sharing the facilities is limited to exchange and exchange access operations, the sharing would not violate the modification.⁵¹ The modification would not permit, however, a sharing of facilities that results in an economic integration of the BOCs and providers of interexchange or information services or which would result in a violation of the modification's non-discrimination provisions.⁵²

G. Participation in the Process of Setting Exchange Boundaries

Some comments addressed the question of appropriate representation in the process of setting exchange boundaries, and what form participation

⁵¹ Some comments expressed concern that independent telephone companies might be precluded, under the modification, from participating in joint ownership of toll switches which result from consolidation of independent toll switches. There is nothing in the modification which would prohibit the independent telephone companies from jointly owning switches with AT&T, which will very likely own the toll offices resulting from consolidation of independent toll switches.

⁵² As set out in Section IV, the potential for such violations in BOC sharing of facilities with an interexchange carrier or information service provider requires close scrutiny of such arrangements.

by interested parties should take. The Mid-Continent Telephone Corporation, for example, stated that the exchange area concept appears to be a workable method for assuring quality service to customers, provided that the independent telephone companies are permitted to participate in the establishment of exchange boundaries. Similarly, the Rural Telephone Coalition suggested that independent telephone companies be permitted to submit further comments when the reorganization plan is made public. Other comments urged that procedures be established for the participation of state and federal regulatory agencies in the process.

The Department of Justice believes that the FCC, state regulatory commissions and the independent telephone companies should have the ability to present their views concerning the exchange areas to be established under the modification. The Department fully expects that in establishing exchange areas under the modification, the BOCs and AT&T will work with the independent telephone companies and the regulatory commissions to the maximum feasible extent. As discussed earlier, the Department itself intends to solicit the views of the FCC and state regulatory commissions on these matters, and to give great weight to these views. In addition, the Department intends to solicit and accord similar weight to the views of the independent telephone companies. As set out in Section I, the Department will provide a period of sixty days following the submission of the reorganization plan for additional comments. Exchange area boundaries would, of course, be an important aspect of the plan. Moreover, the Department expects that exchange area boundaries will be available prior to the submission of the plan. If this is the case, the Department will solicit views of interested parties on these boundaries separately.

IV. Issues Relating to the Provision of Equal Exchange Access

A. The Division of Facilities Between AT&T and the BOCs

Many comments, submitted principally by intercity competitors of AT&T and state regulatory commissions, raised issues regarding the criteria to be used in allocating facilities between AT&T and the BOCs. Several were concerned that the BOCs would not receive the facilities necessary for them to provide exchange services and equal exchange access.

The types of facilities addressed by these comments fall into three

categories: toll centers performing the Class 4 function; facilities used for providing digital and other advanced services; and transmission facilities used in providing exchange services and exchange access for interexchange private line services.

As discussed below in more detail, the modification specifically requires that the BOCs own facilities or control functions needed to provide exchange telecommunications service and equal exchange access to all interexchange carriers. It also recognizes and takes account of sharing and co-location of AT&T and BOC facilities permitted by the modification by requiring that the BOCs file exchange access tariffs that provide for delivery of the interexchange traffic of all carriers (including AT&T) from end offices to the interexchange carriers' points of interconnection at equal charges per unit of traffic. This "uniform delivered price" provision must remain part of the BOCs' exchange access tariffs at least until September 1, 1991, five years after they are required to provide equal access to all interexchange carriers.

Class 4 Toll Centers: Several comments, particularly those of state regulators and interexchange carriers, criticized the modification for not requiring that all Class 4 switches be owned by the BOCs. These comments argued that, without ownership of Class 4 switches, it would be impossible for the BOCs to provide either exchange telecommunications or equal exchange access.

The concerns regarding the BOCs' ability to provide exchange service centered on the role of the Class 4 offices in providing tandem switching of calls originating and terminating within an exchange area, in providing operator services for BOC customers, and in recording information necessary for the BOCs to prepare bills for their services.

Several comments stated that the only appropriate way for the BOCs to provide equal exchange access was to route all carriers' interexchange calls through Class 4 switches that are connected to each of the end offices by toll quality connecting trunks. According to these comments, if the BOCs were precluded from providing exchange access through Class 4 switches they would be required to construct expensive, duplicative trunk groups from each competing carrier's terminal to each of the Class 5 offices in the exchange area. To the extent that such trunk groups were smaller than those serving AT&T, they would be less efficient and more costly for the BOCs to provide. The comments argued such

arrangements would be burdensome for the BOCs, and, after 1991, when the equal charges for delivered traffic requirement expires, competing interexchange carriers would be exposed to higher access charges than AT&T.⁵³

Some comments argued that, in addition to potential cost penalties, it would be physically impossible for the BOCs to provide equal quality exchange access to carriers competing with AT&T without the ability to route the competitors' traffic through the Class 4 switch. Satellite Business Systems ("SBS"), for example, stated that the Class 4 office is the only gateway through which interexchange carriers could gain access to the modern digital trunks in the local network and that the only alternative facilities available to provide exchange access for competing carriers would be two-wire analog facilities.

The SBS and Southern Pacific Communications Company ("SPCC") comments emphasized that a large proportion of AT&T's Class 4 switching capacity is, or soon will be, provided by the digital Number 4 ESS switches that will offer high quality switching of traffic from digital carrier systems without the need for analog to digital conversion, thereby making possible end to end digital services. According to these comments, if the BOCs are not able to route competing carriers' traffic through these switches, it will be impossible to provide exchange access that would permit competitors to offer services equal to AT&T's intercity digital services.

The Department believes that these various criticisms in large part are based upon a misperception of the basic premise of the modification's equal access requirement as it relates to the delivery of traffic between an end office and the facilities of an interexchange carrier. Simply put, the fundamental judgment that underlies the modification is that the BOCs, once separate from AT&T, will be in a better position than the Department or a court to establish the most efficient configuration of switching and transmission facilities in a given exchange area to provide exchange access equal in type and quality to that provided AT&T. Depending on the nature of the local

⁵³ Comments submitted by several of AT&T's interexchange competitors described the current ENFA interconnection arrangements offered to competing carriers by the BOCs, arrangements that do not include routing through the Class 4 toll center. These comments explained the deficiencies in those arrangements, citing testimony given in *United States v. AT&T*.

network, there may be several ways of configuring connecting arrangements to provide all carriers equal access. For example, the relative efficiency of direct trunking from end offices to an interexchange carrier and trucking through an intermediate tandem switch may vary from situation to situation. If the modification required a particular routing system in all circumstances it might impose inefficiencies on the BOCs. Thus, the modification's only requirement is that actual equality between competing carriers be achieved.

The modification recognizes that, because the local distribution networks were not designed for a multiple supplier environment, the use of existing facilities to achieve equal access in the delivery of traffic to and from end offices may encounter problems of technical and economic feasibility. Thus, additional or newly-configured facilities necessarily may be required to fulfill the BOCs' equal access responsibilities. The modification takes account of these factors by requiring that, at least until September 1, 1991, the charges for receipt and delivery of traffic to and from end offices be uniform per unit of traffic carried for all carriers. Therefore, even if different transmission and switching facilities are used in serving other carriers than are employed in serving AT&T, there will be no cost disadvantage to such carriers. This uniform delivered pricing requirement is discussed in more detail below.

Before setting out the principles that will guide the Department's review of the ownership and sharing of switching systems under the reorganization plan, it may be useful to describe briefly the functions currently performed by telephone switching systems and how such functions will change after the reorganization.

Presently, the switching functions in the network include the end office or Class 5 function, the local tandem function, the toll connecting Class 4 function, and the higher level interexchange switching functions (Class 1, 2, or 3 functions) that connect intertoll trunks to intertoll trunks. In fact, all but one of the switching systems in service performing the Class 1, 2 or 3 functions also perform the Class 4 function. The Class 5, or end office, connects the network with subscriber equipment such as a telephone or PBX. The local tandem switching function connects a number of end office switches and is used to complete calls within the local calling area without the need to construct separate trunks

between all of the end offices. The Class 4 switching function has two primary purposes: To perform routing of originating and terminating toll traffic, and to provide a point at which AT&T's long distance calls to and from end offices in the area may be concentrated.

In order to understand how the modification resolves the Class 4 ownership issue, it is important to recognize that, following the reorganization, the present classification scheme will not accurately describe the functions performed by the various switching systems. This results from two factors. The first is that, since the modification's exchange areas will be larger than current exchange areas, a portion of intrastate toll service will be provided by the BOCs. The second factor is that the BOCs' responsibility is to provide *equal* exchange access to all interexchange carriers.

The Department expects that switching systems providing only end office or local tandem functions will be owned by the BOCs. Switching systems that provide both AT&T interexchange and BOC exchange and exchange access functions will generally be owned by the party with predominant use.⁵⁴ The other party will obtain access to the functions or capacity it requires under leasing arrangements to be described in the reorganization plan. Since the great majority of switches providing Class 4 functions also provide local tandem or end office functions, the BOCs will own many of these switches under the predominant use test. Indeed, it is likely that the BOCs will own all, or nearly all, switching systems currently providing both the Class 4 and Class 5 functions.

It is also probable that the BOCs will retain control over a significant proportion of the capacity of Class 4 switches used predominantly for interexchange purposes and to be owned by AT&T. In particular, most Number 4 ESS electronic toll switches now perform three distinct functions that will be part of the BOCs' responsibilities: they perform local tandem switching; they perform toll switching for what will be intraexchange toll traffic; and they perform the exchange access function of switching incoming toll calls to the appropriate end offices. Since Section 1(A)(2) of the proposed modification requires that each BOC retain control over the exchange telecommunications and exchange access functions of shared switches, the BOCs will have the

right to use their leased portion of such switches for exchange access purposes, should such additional use be the most appropriate means of providing equal exchange access.⁵⁵

At the present time, it is not clear that use of a switching system performing a Class 4 function and predominately used to route AT&T's interexchange traffic would be the only or best way to provide equal exchange access. For example, it may be that use of a separate toll-quality BOC tandem switch for the provision of exchange access could benefit competition by permitting the BOCs to move their switching of intraexchange traffic out of the AT&T-owned Class 4 switches and into such facilities.

The Department will require that the reorganization plan identify the resources that will be available to the BOCs after divestiture for providing equal exchange access, the current plans for implementing equal exchange access, and other options that would be available to the BOCs after divestiture for achieving that goal. The views of the newly-appointed senior executives of the regional companies, as well as comments from other interested persons, will assist in assuring the BOCs' ability to fulfill the modification's equal access requirements.⁵⁶

⁵⁵ In this regard, it should be noted that the modification prohibits AT&T from interfering with the BOCs' implementation of equal exchange access. Thus, while AT&T is not required to maintain a BOC presence in all existing multi-function facilities that might be used to perform exchange access functions, it must transfer sufficient facilities and make available sufficient resources to permit the BOCs to meet their exchange access obligations. The Department will examine the lease agreements for BOC use of AT&T switches to ensure that the BOCs are not unduly restricted in their ability to obtain additional switching capacity should they need increased capacity to meet their responsibilities. In addition, the exchange access tariffs filed by the BOCs to be effective on the date of divestiture will be examined by the Department to assure that they do not impair the ability of the BOCs to concentrate traffic through a tandem switch if that is necessary to provide equal exchange access service efficiently to all interexchange carriers.

⁵⁶ Some of the comments expressed concern that use of the phrase "through the end offices" in the modification was intended to mean that equal access would only be provided to interexchange carriers connecting directly to the Class 5 offices with dedicated trunk groups. These comments misunderstand the meaning of the modification which requires that equal exchange access be provided to all interexchange carriers at those carriers' locations, not at any particular switching point in a BOC's network. The use of the phrase "through the end offices" was only intended to establish a reference point, the end office, by which compliance with the modification's timing requirements for phased in access could be measured.

⁵⁴ This was the approach for determining ownership of multifunction facilities that the Department recommended a trial in *United States v. AT&T* and which AT&T has agreed to use.

Some comments expressed concern that under the modification the BOCs would not retain the operator, testing, and billing facilities necessary to provide exchange and exchange access service. These concerns were largely based on the assumption that such facilities were associated with the Class 4 switching office and that AT&T would own such offices. In fact, such facilities in many cases are not necessarily associated with the Class 4 office. To the extent that the facilities used to provide operator and testing services are multifunction facilities, suitable allocation of such facilities between AT&T and the BOCs can be accomplished within the framework of the modification.

2. Switching Equipment and Other Facilities Used to Provide Digital and Advanced Services: American Satellite, SBS, and SPCC commented that the BOCs should own the digital distribution facilities necessary for economical access by interexchange carriers. The digital facilities which appear to be of most concern to competing carriers are those used to provide AT&T's private line Digital Data Service ("DDS"), the proposed Circuit Switched Digital Capability ("CSDC") and Local Area Data Transport ("LADT").

DDS facilities will be divided between AT&T and the BOCs using the same principles which apply to the voice network. Transmission and multiplexing equipment necessary for the BOCs to provide intraexchange service and exchange access will be owned or controlled by the BOCs. Multifunction facilities will be owned by the party having predominant use which will lease the other party capacity in such facilities necessary to provide its services.

As described by AT&T, CSDC will be a step toward an Integrated Digital Service Network. Integrated Digital Services refers to the fact that voice, data, video, and facsimile signals will be transmitted and switched over the same digital facilities on an end to end basis without any intermediate analog to digital conversions. CSDC is a switched high speed service over which a customer may transmit either voice or data. This service will be offered to customers directly from ESS Number 1A switches that switch digital signals without converting them to analog form. At the ESS Number 1A switches, the digital circuits will be multiplexed onto appropriate digital carrier systems. Higher level switching will be performed by Number 4 ESS switching systems. Since the 1A switches will be interfacing directly with the customer (serving an

end office function), and since access through this switch is the only means through which interexchange carriers may be provided switched access to the increasing amount of digital transmission facilities in subscriber line plant, competing carriers must be able to access such switching systems. Since these switching systems will generally be assigned to the BOCs in the reorganization plan on the basis of predominant use for intraexchange services, interexchange carriers will have access to such switches. If there is a case where such a switch is currently serving predominantly as an interexchange switch, an alternative means of providing economical access to the local digital network will have to be specified in the reorganization plan.

The proposed LADT discussed by the comments is a low speed data service that will provide packet switched access from homes and businesses to information vendors, alarm services, and other interactive data applications. It will be provided by either dial-up access over a customer's regular access line, or "piggy backed" onto the regular voice channel of a telephone line. Since this service appears to be derived from exchange service, the facilities associated with LADT would be owned by the BOCs.

3. Transmission Facilities Used to Provide Exchange Service and Exchange Access for Interexchange Carriers' Private Line Services: The transmission systems currently used to provide telephone company message services will be divided between AT&T and the BOCs under the reorganization plan in accordance with the same principles used for switching systems. Transmission systems which carry message traffic that is predominantly intraexchange will be owned by the BOCs, as will all the transmission systems between switching systems providing the Class 4 and Class 5 functions. Transmission systems that predominantly carry intraexchange traffic will be owned by AT&T. It is probable that application of the predominant use test will assign ownership of most short haul systems to the BOCs and most long haul systems to AT&T. Where necessary, the reorganization plan will provide for leases between AT&T and the BOCs for transmission capacity needed to provide their respective services.

Many comments focused on the need for the BOCs to retain ownership of the distribution facilities used for private line services. Some concern was expressed that AT&T might own the local as well as intraexchange portion of

private line circuits, thus allowing it to bypass completely the BOC facilities in connecting its customers to the AT&T network. AT&T ownership of such facilities, it was argued, would deny necessary access to intercity competitors.

Under the modification, the term "exchange access" is not limited to switched services such as MTS/WATS, but includes all distribution facilities used for providing interexchange telecommunications service. Following the reorganization, AT&T will obtain such distribution facilities for private line services pursuant to the BOCs' exchange access tariffs instead of the current division of revenue contracts. The BOCs will retain ownership of transmission facilities that will enable them to continue the facilities offerings now made to competing interexchange carriers provided that both ends of each end link facility provided are within the same exchange area. The BOCs will also retain the transmission facilities used to provide intraexchange private line services.

4. Co-location and Future Sharing of Facilities: Many comments stated that, if AT&T were allowed to co-locate and share facilities with the BOCs, competitors of AT&T should be offered the same opportunity. Specific concerns were raised concerning the absence of any requirement that the BOCs allow joint ownership or use of switches or co-location of the equipment of other carriers.

As a matter of practical necessity, the reorganization plan will have to provide for a substantial amount of sharing of transmission, switching and other facilities between AT&T and the BOCs through the use of leasing arrangements. There is simply no alternative, given the extent to which multifunction facilities have been utilized by the Bell System. To prohibit such shared use of existing multifunction facilities would result in the construction of unneeded, duplicative facilities. For example, there are many situations where AT&T and a BOC will both own facilities which are located in the same building, conduit, transmission tower, or right of way. If not permitted to co-locate, the BOCs or AT&T would be required to construct duplicative facilities, increasing costs to ratepayers as a whole. There may also be cases where planned facilities will have to be completed on a co-located basis under the reorganization plan in order to avoid increased costs or disruptions in service.

Any agreements between AT&T and the BOCs for sharing or co-location entered into after January 8, 1982,

however, will receive close scrutiny during the Department's review of the reorganization plan. Additionally, the Department may require that AT&T-owned switches to be installed after the date of divestiture, but presently scheduled to perform BOC related functions, be configured to provide all exchange access functions, requested by a BOC to be provided in that switching systems as a condition precedent to continuation of the project on a shared-used basis.

After divestiture, the modification, by its terms, would not prohibit the BOCs from sharing excess capacity in their facilities with interexchange carriers or information service providers, as long as such capacity is made available on a nondiscriminatory basis. Nevertheless, such sharing arrangements create a significant potential for violation of particular provisions of the modification. First, to the extent that, as a practical matter, such agreements amount to a joint venture with the sharing enterprise, or otherwise give the BOC a stake in its financial success, e.g., payments on a per-unit-of-traffic basis (exclusive of tariffed access charges), the modification's prohibition against the BOCs' reintegration into interexchange or information services markets would be violated. Second, an arrangement which interferes with the ability or incentive of a BOC to provide equal exchange access or information access would violate the modification's nondiscrimination provisions. Finally, if a BOC were to construct additional or "excess" facilities for the purpose of leasing them to third parties, the BOCs might be engaging in an independent business of leasing facilities apart from providing exchange telecommunications. Consequently, such sharing of BOC-owned facilities requires careful review. Agreements by a BOC to share facilities owned by others might also pose potential problems under the modification. Again, such agreements must not be formulated or operate in a manner that interferes with the ability of the BOC to provide equal access, or tends to create a partnership relationship between a BOC and the other carriers.

B. Issues Relating to the Equal Access Injunctions

A large number of comments raised specific questions regarding the reach and scope of the BOCs' obligation to provide equal exchange access under Section II and Appendix B of the proposed modification. The following discussion addresses these issues.

1. Applicability of Equal Access Provisions:

Several comments criticized

the modification for not specifically requiring the BOCs to provide equal exchange access for users other than interexchange carriers. Most of these comments addressed the interests of private communications systems and competing intraexchange carriers.

a. Private Systems. Comments by owners and representatives of private communications systems argued that evidence presented in *United States v. AT&T* showed that the BOCs have in the past discriminated against private communications systems and that such conduct should be enjoined.

SBS emphasized that private communications systems should be assured equal access to local distribution facilities so that customers of competing interexchange carriers will be able to obtain access to facilities connecting their own systems with the networks of the interexchange carriers and not have to rely on the interexchange carriers to provide such facilities. The comments addressing this issue in general did not discuss specific access problems. Indeed, comments submitted by the Association of American Railroads stated that "in general, telephone company interconnection relationships with railroad systems has been satisfactory over the years."

The Department does not believe it necessary or appropriate for the modification to address the interconnection of the BOCs with private systems. First, the needs of private customers and common carriers are likely to be different. To that extent, inclusion of provisions relating to private systems would add complexity to the modification and its administration. Second, the FCC is expected to conclude shortly a three-year inquiry into AT&T's private line rate structure in Docket 79-246. Whether distinctions should be made between offerings to private customers and common carriers is an issue in Docket 79-246, and there is no reason to believe that a more appropriate solution could be formulated in the modification than will be reached by the Commission. Finally, the establishment of unbundled exchange access tariffs pursuant to the modification should facilitate the ability of private systems to obtain access to such BOC facilities and services and as the regulatory authorities deem appropriate.

b. Intraexchange Carriers.

Representatives of the radio common carriers (RCCs) argued that, as competitors of the BOCs, they would be subject to discrimination against them by the BOCs, and thus the modification

should provide for equal access for such carriers. These comments noted that the complaint in *United States v. AT&T* contained allegations that AT&T has impeded the access of RCCs to telephone company facilities. The RCCs did not raise any specific problems that they were now experiencing in obtaining interconnections with BOC facilities.

As the RCCs correctly noted, the United States did not make any contentions at trial regarding the access of RCCs to BOC facilities. As discussed above, the focus of the government's case was the anticompetitive consequences of the vertical integration of franchised local exchange monopolies with potentially competitive intercity services. The relief requested by the United States was designed to deal with this anticompetitive potential. The interconnection of RCCs as exchange carriers is simply not related to the anticompetitive vertical integration which was at the heart of the government's case and which the modification was designed to end. As discussed above, the modification's silence regarding the role of the BOCs as regulated monopolists engaged in the provision of competitive activities within an exchange is not indicative of the Department's view of such activities. Regulators, of course, may take action with regard to competitive problems arising in this area.

2. BOC Facilities and Services Covered by the Equal Access Injunctions:

Many comments proposed that the equal access injunctions contained in Appendix B should specify particular elements of exchange access that would be made available by the BOCs. For example, it was suggested that the modification should specifically provide for equal access to private line facilities including: digital and broadband carrier systems; facilities used for the automated ordering, installation, testing and repair of circuits; engineering services; and, conduits and rights of way.

The modification requires the BOCs to file tariffs, to be effective on the date of the reorganization, for the provision of exchange access with unbundled schedules of charges which shall not discriminate against any carrier. Since AT&T must obtain its exchange access under these tariffs, as opposed to the existing division of revenue arrangements, there will be every incentive for the BOCs to file tariffs that will offer a very broad array of facilities and services. The only BOC facilities which AT&T will not have to obtain through the exchange access tariffs will be the multifunction facilities which

AT&T will share with the BOCs pursuant to the leasing arrangements specified in the reorganization plan.

3. *Provision Regarding Equal Charges Per Unit of Traffic Delivered:* Several comments requested that the meaning of Paragraph (B)(3) of Appendix B be clarified. This provision requires that, from the date of divestiture until September 1, 1991, the transmission of interexchange traffic between end offices and the facilities of interexchange carriers within and exchange area or reasonable subzone be at charges that are equal for all interexchange carriers, per unit of traffic delivered or received. This requirement is limited to charges for the transmission of calls above end offices, and does not apply to other services provided as part of exchange access.

Questions were raised concerning the relationship between the cost-based standard for access charges and the "uniform delivered pricing" requirement; how the requirement for uniform transmission charges would apply to private line services; and the basis for requiring such averaging only until September 1, 1991.

Several comments argued that the modification was inconsistent to require that the exchange access tariffs be cost-based and also to require that transmission charges be the same for all customers receiving service. In fact, charging uniform prices to all customers of a service is a very common practice in utility rate design and is accepted by both the FCC and state regulatory agencies. The purpose of this practice is to prevent certain customers from being substantially disadvantaged as a result of their geographic location.

In the case of the BOCs' exchange access tariffs, the purpose of uniform pricing is to compensate for the possibility that traffic to some carriers may be carried over smaller and thus less efficient trunk groups and to limit the advantage that AT&T will have as a result of the co-location of its facilities with those of the BOCs.

The SBS comments expressed concern that equal charges per unit of traffic would not be an appropriate way to equalize exchange access costs for private line services. This section of the modification was only intended to apply, however, to switched services. Nevertheless, when the BOCs' exchange access tariffs for private line services are submitted, the Department will examine any provisions which appear to advantage AT&T competitively by reason of the co-location of its facilities with those of the BOCs.

Several comments questioned the expiration of the equal charges per unit

of traffic requirement in 1991. They proposed instead that the requirement should remain in effect until a determination is made that interexchange carriers are receiving equal exchange access or that the market for interexchange services has become competitive.

The Department believes that a period of 5 years following the time at which the modification's equal access provisions become fully effective is a reasonable period during which the BOCs can make necessary adjustments to their facilities. However, once the BOCs file the equal access tariffs required by the modification and they become effective, any changes in such tariffs will be subject to approval by the FCC for interstate services and the state commissions for intrastate services. If the BOCs should decide, after September 1, 1991, that it would be in their interest to change from a uniform minutes of use basis, they would be free under the modification to file such tariffs for regulatory approval. Conversely, regulators could require continuation of uniform pricing.

4. *BOC Charges for Unequal Exchange Access:* Some comments criticized Paragraph (3) of Appendix B which permits, but does not require, the BOCs to charge lower rates to carriers receiving unequal access during the phase-in period specified in Section A of Appendix B. For example MCI argued that the BOCs should be prohibited from charging rates for exchange access which exceed the charges made for comparable services to AT&T business customers. These carriers fear that AT&T will use the interim period until divestiture is completed to weaken its competitors by filing exchange access rate increases which could make their services noncompetitive. They argued that, since the government's evidence in *United States v. AT&T* charged that such conduct by AT&T was anticompetitive, the modification should preclude AT&T from initiating such rate increases.

These comments correctly state that the modification does not purport to deal with AT&T's charges for exchange access during the period before the reorganization. The issues involved in the charges for connections with interexchange carriers are, however, currently before the FCC and involve the interpretation of a contract between AT&T and several of the interexchange carriers (in the ENFIA Agreement). Under these circumstances, it is quite possible that any provision in the modification which enjoined any increase in ENFIA charges could be inconsistent with the FCC's decision in this matter.

Therefore, although the Department would be concerned if rates for exchange access prior to implementation of the modification's equal access provisions did not reflect the reduced value of unequal access, it would not be appropriate to supplant the FCC in resolving these issues.

5. *Phase-in Period For Equal Access:* Some comments, including those of SBS, stated that the modification should require AT&T to begin providing equal access immediately, as opposed to "no later than September 1, 1984." It was suggested that such equal access could be provided much earlier than specified in the modification if AT&T routed traffic designated for competitors through Class 4 switches. Other comments criticized the modification for not setting a specific date by which exchange subscribers would have the ability to dial the same number of digits to access competing interexchange carriers as to place a call with AT&T.

The issues presented by these comments are, first, whether it is practical for the modification to regulate the interconnection practices of the BOCs prior to the divestiture; second, whether the phase in periods under which the divested BOCs will be required to provide equal access are reasonable; and, third, whether the modification should force a revision in the national numbering plan earlier than it may occur under present regulatory authority.

As to the first issue, the Department has concluded that attempting to inject itself and the Court into questions of how AT&T should provide interconnections to interexchange carriers prior to divestiture would not substantially enhance the prospects for improved interconnections, and could delay the schedule for the BOCs' divestiture. Indeed, the very basis for divestiture is that such questions cannot be completely resolved until separation of the BOCs and AT&T. The FCC has been attempting to formulate a regulatory solution to the equal access problem for several years without success.

The second issue is whether the phase-in period for provision of equal access is reasonable in view of the need to make changes in the network to offer such services. The provision of access required by the modification requires the reprogramming of existing stored program controlled switches to offer the enhanced interconnection arrangements, and the replacement of existing electromechanical switches with electronic equipment capable of providing equal access features. The

Department believes that the time period permitted will provide proper incentives for the BOCs to produce equal access expeditiously, but will not result in the wasteful expenditure of resources that might be required to accomplish the task in a much shorter period of time. If the FCC determines that equal exchange access should be provided more quickly, there is nothing in the modification which would preclude it from ordering that this be done.

The Department believes that the question of when the national numbering plan should be changed to permit access code equality is a matter which is more appropriately resolved by regulatory authorities than by the modification.

6. BOC Routing of Customers' Traffic to Predesignated Interexchange Carriers: Several comments criticized the provision in the modification requiring the BOCs to tariff a service offering that would route all of an exchange customer's intercity calls to a predesignated intercity carrier. Some stated that this provision would have the effect of continuing AT&T's monopoly position, since customers would not want to have all their calls routed to a competing carrier that might not be able to complete calls to every part of the country.

Since all intercity calls are now automatically routed to AT&T, this service would not apply to AT&T. Rather, the purpose of this provision is to allow exchange customers the right to substitute another interexchange carrier for AT&T as the carrier to be used if no other designation is made by dialing an access code. A variation of this service, which would allow customers to select from more than one predesignated interexchange carrier by dialing one or two digits, is possible, although such a service is not required by the modification. Regulatory authorities have the jurisdiction to determine what, if any, charges should be imposed for these services.

7. BOC Billing Services: Numerous comments criticized the modification for not prohibiting the BOCs from discriminating among interexchange carriers in the provision of billing services. The modification prohibits the BOCs from terminating local exchange service to customers who fail to pay bills for interexchange service unless billing service is made available to all interexchange carriers, but otherwise permits the BOCs to decide to what interexchange carriers, if any, they will provide billing and collection services.

While it is true that joint billing may reduce costs for both the customer and

the interexchange carrier, as pointed out in the SBS comments, there are alternatives available to such carriers in addition to billing by the BOCs. MCI, for example, has an agreement with American Express which bills its card members for their use of MCI's intercity services.

A requirement in the modification that the BOCs provide actual billing to all interexchange carriers on an equal basis could impose a substantial administrative burden on the BOCs including the need to maintain computerized schedules of all the varieties of charges and billing categories an interexchange carrier may have. If a need to regulate the provision of billing services by the BOCs emerges in the future, the appropriate regulatory agencies may do so.

8. The Cost Methodology to be Used in the BOCs' Exchange Access Tariffs: Several comments suggested that the modification should specify the cost methodology to be used in the exchange access tariffs, or, at least, that AT&T should be required to specify the methodology that it intends to use so that problems can be resolved prior to the reorganization. Many comments made particular recommendations as to how the tariffs should treat particular costs.

Because access charge tariffs must be in effect at the time of divestiture, the Department expects the BOCs to complete the appropriate tariff filings, including the required cost justification, with the FCC and the various state regulatory agencies by early 1983. This should allow ample opportunity for the agencies and the public to make determinations as to cost methodology and to prescribe any changes that may be necessary to bring the tariffs into compliance with regulatory requirements. Since the FCC plans to issue its regulations on access charges before the end of this year, the BOCs should be able to incorporate these regulations into their filings.

Several comments stated that the modification should determine how subscriber plant or non-traffic sensitive costs should be allocated to exchange access services. MCI stated that the current Ozark formula is anticompetitive and that the modification should prohibit its use as a basis for determining exchange access charges.

Although the formula used for the allocation of non-traffic sensitive costs may in fact have competitive significance, the modification is not the appropriate vehicle for determining such allocations. The FCC has created a federal-state joint board under Section 410 of the Communications Act to modify the current Separations Manual

in light of the developing competition in telecommunications markets.

Amendment of Part 67, 78 F.C.C. 2d 837 (1980). The FCC has already implemented certain interim changes in the manual recommended by the joint board, and a new manual is scheduled to be recommended to the Commission during the first quarter of 1983. Thus, the exchange access tariffs should reflect the new manual.

9. The Effect of the Exchange Access Injunctions on the BOCs' Other Obligations to Interexchange Carriers: Several comments expressed concern that the failure of the modification specifically to require a particular kind of access service might be interpreted to imply an antitrust immunity for failure to provide such a service, or that it could be interpreted as a finding by the Court or the Department that such a service should not be required by an appropriate regulatory agency.

There is no basis for such concerns. The modification cannot, and is not intended to, resolve all the issues facing the telecommunications industry, nor does it assume that the regulatory agencies responsible for overseeing the activities of AT&T and the BOCs will now abandon that task. The purpose of the modification is to bring about an industry structure that will end the incentive and ability of the BOCs to monopolize potentially competitive markets, and to provide a framework for the transition to full equality of treatment by the BOCs between AT&T and its competitors after divestiture. It does not establish the rights or liabilities of any person under the antitrust laws or regulatory statutes.

V. Issues Raised Regarding Potential Anticompetitive Conduct by AT&T Resulting From AT&T's Position in Intercity Services and Equipment Markets Following Divestiture

A number of commenting parties, principally competitors of AT&T, as well as some state commissions, asserted that, following the reorganization and divestiture required by the proposed modification, AT&T will continue to be the dominant firm in the intercity services market with an overall market share in excess of 95 percent. These parties argued that such a dominant position in the intercity services market will give AT&T the power to engage in various anticompetitive activities both in the intercity services market itself as well as in adjacent markets such as the telecommunications equipment market, the unregulated information services market, and the market for customer premises equipment. For example, it

was suggested that AT&T would be able to cross-subsidize some of its intercity service offerings, its unregulated information services, and its telecommunications equipment with monopoly profits from non-competitive intercity service offerings; that AT&T could restrict competition in the intercity services market and the information services market by denying competitors reasonable access to its intercity network; that the continued integration of AT&T's intercity service business with its equipment manufacturing business may give Western Electric preferential access to technical information about the AT&T network; that AT&T will be free to re-integrate into the local exchange market by acquiring non-BOC exchange carriers; and that AT&T's dominance in the market for customer premises equipment will permit it to engage in anticompetitive pricing strategies.

The Department does not believe that AT&T's possession of such a large market share at the time of divestiture means that AT&T possesses the monopoly power necessary to engage in anticompetitive activities such as those described.⁵⁷ In the *AT&T* case, while recognizing that its enormous market share was indicative of AT&T's market power, the Department contended that the true source of AT&T's monopoly power was its integrated structure in which AT&T controlled both the local service monopolies and the dominant carrier in the intercity services market. This integrated structure gave AT&T the ability to deny its intercity competitors the access they needed to the local network and permitted AT&T to cross-subsidize competitive services with

revenues from regulated monopoly services.

The proposed modification establishes an industry structure in which AT&T will be deprived of the source of this monopoly power by divestiture of its ownership of the regulated local companies. AT&T will thereafter not be able to deny competitors access to essential bottleneck facilities and it will not be able to cross-subsidize competitive service offerings with its revenues from regulated natural monopoly services. Further, the separation of AT&T's natural monopoly service from the rest of the business means that following divestiture AT&T will operate exclusively in competitive markets. While the degree of competition currently existing in each segment of the business varies, the Department believes that competition will flourish in all segments of the business in the long-term once the source of AT&T's monopoly power has been removed.

A. Intercity Services Market

A number of commenting parties asserted that, until such time as a fully competitive market develops, AT&T will still be able to monopolize the intercity services market by cross-subsidizing competitive intercity services with revenues from non-competitive intercity services or by imposing limitations on the ability of competitors to gain access to AT&T's intercity network.

1. *Cross-Subsidies*: The Department does not believe that there is a significant danger of cross-subsidization occurring within the intercity services market during the transition to a fully competitive market. In order to implement such a scheme of cross-subsidy, there would have to be substantial segments of the intercity services market that AT&T could protect from competitive entry. Otherwise, any effort to secure supracompetitive profits in one segment of the market in order to cross-subsidize other segments of the market will merely invite entry in the high-priced segments of the market, which will have the effect of driving prices back to the level of costs in both segments of the market.

Thus, an attempt by AT&T to engage in interservice cross-subsidy (for example, subsidizing private line services with revenues from MTS services) is not likely to succeed. Because of the high level of demand substitutability among various intercity services, a truly significant distortion of AT&T's rates will drive much of the demand from the newly high-priced segment of the market to the newly low-

priced segment. Further, and more importantly, the extremely high level of supply substitutability in the intercity services market means that competitors can quite easily shift transmission capacity from one service to another in response to significant shifts in AT&T's rates. There is already substantial competitive transmission capacity in place on routes between most major population centers, and that capacity is expanding rapidly. Under these circumstances, the Department believes that even though the intercity market will still be quite concentrated after implementation of the divestiture plan, there will be sufficient competitive pressure to guard against significant interservice cross-subsidization over the transitional period.

Similarly, the Department does not believe there is a significant danger that AT&T might attempt to extract supracompetitive profits from low density or short distance routes on which it does not presently face competition, to subsidize low prices for the same services on routes which are subject to competition. An effort to secure monopoly profits on any particular route or class of routes will attract additional carriers to serve those routes, again driving prices to a competitive level. While the competitive response to a geographic cross-subsidy scheme may not come as swiftly as the response to an interservice cross-subsidy, it is entirely feasible through construction of terrestrial microwave systems, in which significant economies of scale can be obtained at fairly low levels of traffic, as well as through the relatively inexpensive addition of earth stations to an existing satellite network.⁵⁸ In addition, since competitive alternatives already exist over most dense routes, a scheme of geographic cross-subsidization would require that a fairly small segment of the intercity services market bear the burden of cross-subsidizing the bulk of the market. In such a scheme, the rate levels on the low density routes would have to be so high as to make such a scheme impractical, or, at least, quite apparent to regulators and to the Department.

Finally, even if there is a danger that some degree of cross-subsidization could occur over the short run, there are no additional tools available that could be incorporated into the proposed modification to guard against it effectively. As the Department

⁵⁸ It is also likely that many of what are now low density or short-haul toll routes will be included within the exchange areas to be served by the BOCs. These revenues will therefore go to the BOCs, not to AT&T.

⁵⁷ AT&T's substantial market share reflects the fact that, as a result of regulatory policy that did not permit competitive entry, AT&T has served the intercity market for much of the twentieth century on a monopoly basis. The market has only recently been open to meaningful competitive entry. Indeed, entry into the market for switched services, which accounts for most of the market by far, has occurred only in the past few years following the Court of Appeals' decisions in the *Execunet* litigation in 1977 and 1978. *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), cert. denied, 434 U.S. 1040 (1978); *MCI Telecommunications Corp. v. FCC*, 580 F.2d 590 (D.C. Cir.), cert. denied, 439 U.S. 980 (1978). Prior to the *Execunet* litigation, entry had occurred only for private line service, which constitutes only a small portion of the overall intercity services market. Most importantly, AT&T's current market share does not reflect the substantial lowering of entry barriers that will be achieved by divestiture of the BOCs and the modification's equal access provisions. Thus, while a substantial market share is often indicative of a firm's ability effectively to exercise monopoly power, it does not necessarily reflect the continued existence of monopoly power in an industry in which the transition from a monopoly to a competitive market structure has only recently been initiated.

demonstrated at trial, regulatory programs designed to police the reasonableness of AT&T's rates on a cost basis have proven to be ineffective, even when administered by a regulatory body with the staff, expertise and mandate to implement such programs. The Department does not believe the public interest would be served by engaging either the Court or the Department in such a regulatory program. Instead, the Department believes that the public interest is best served by implementing the restructuring of the company as quickly as possible in order to facilitate the rapid development of a fully competitive market.

2. Access to AT&T's Intercity Network:

A number of parties commented that as long as AT&T held the dominant position in the intercity services market, other common carriers and operators of private telecommunications systems would still need to be able to interconnect their networks with AT&T's network and to resell AT&T intercity services as a part of their own service offerings. These parties expressed concern that since the proposed modification does not contain injunctive provisions requiring AT&T to provide non-discriminatory access to its intercity facilities and services after the divestiture, AT&T may be able to restrict competition in the intercity services market by imposing interconnection restrictions or prohibitions on resale.

As a number of these parties themselves acknowledge, existing regulatory requirements already obligate AT&T to provide non-discriminatory interconnection and to permit resale of its services. The failure of the decree to impose a similar requirement in no way disturbs those existing interconnection obligations or displace the authority of appropriate regulatory commissions to impose such obligations or to enforce them as they deem appropriate.

In addition, while such interconnection restrictions and prohibitions on resale were potent anticompetitive devices employed by AT&T during the incipency of competition in the intercity market,⁵⁹ the

Department believes that, even if regulatory authorities permitted re-imposition of these restrictions, they would no longer have a significant effect on the market due to the increasing availability of alternative intercity transmission capacity from non-AT&T sources. Therefore, the Department does not believe that the modification, which is intended to establish the long-term industry structure, should include such injunctive provisions on AT&T.

B. Unregulated Information Services Market

The elimination of the restrictions in the 1956 consent decree will free AT&T to compete directly in the information services market on an unregulated basis. A number of commenting parties expressed concern that, because of its dominance in the intercity services market, AT&T would be able to engage in anticompetitive conduct in the information services market, such as cross-subsidizing its information services with revenues from its intercity telecommunications services or discriminating against other firms in that market that need to secure transmission capacity from AT&T. It was suggested either that AT&T be prohibited from entering the information services market, that it be permitted to enter the information services market only on a separate subsidiary basis, or that other forms of injunctive restraints be imposed.

The Department does not believe that the public interest would be served in the long run if AT&T is prohibited from entering the information services market, provided that it no longer also provides regulated natural monopoly services. In fact, the Department believes that entry by AT&T in these fields will be procompetitive, bringing to the market additional resources, technology and potential for innovation that are likely to accelerate and expand the growth and development of these new services. In the long-term, the Department believes that a competitive intercity telecommunications market structure will more than adequately protect against the dangers of anticompetitive conduct by AT&T in the information services market. Therefore, in light of the restructuring required by the proposed modification, the Department believes that the restrictions in the existing decree that have prevented AT&T participation in the information services market should now be removed.⁶⁰ To the extent that

opportunities for anticompetitive conduct may exist during the transition from the existing market structure to a more fully competitive market structure, the Department does not believe that dangers of AT&T engaging in such conduct are so substantial as to warrant finding the proposed modification not in the public interest or to require incorporating further behavioral restrictions on AT&T in the proposed modification.

1. *Cross-Subsidies:* The number of parties expressed concern that AT&T would be able to cross-subsidize its new information services with monopoly profits from its intercity services business. The Department does not believe that there is a significant danger of such conduct occurring. As discussed above, it is unlikely that AT&T would be able to pursue a scheme of cross-subsidization. In order to accomplish such a scheme, there must be a set of services which AT&T is able to protect from competition and from which it is therefore able to derive monopoly profits. The divestiture of the local operating companies together with elimination of regulatory barriers to entry for all intercity services deprives AT&T of the power to protect any of its services from competition. The existence or threat of competition in all of its services will substantially constrain AT&T's ability to secure supracompetitive profits from any of its intercity services in order to cross-subsidize other lines of business, such as information services.

Some parties have suggested that the danger of cross-subsidization could be reduced if AT&T were required to provide unregulated information services only through a separate subsidiary such as that currently pending before both the FCC and Congress. Depending on the manner in which the separate subsidiary concept were implemented, it is possible that the existence of such an arrangement would provide some added measure of control over AT&T's ability to cross-subsidize. However, given that such cross-subsidization is unlikely to occur and would be a transitional phenomenon in any event, the Department does not believe a potentially complex regulatory device such as a separate subsidiary

subsidiary mechanism established by the FCC's *Computer II* decision was the issue litigated before the court in New Jersey. Notwithstanding the Department's opposition, the court entered the construction sought by AT&T, and the Department's appeal of that decision was pending before the Third Circuit at the time the parties entered into the agreement now pending before this Court.

⁵⁹Thus, AT&T's interconnection restrictions designed to prevent "piece-out" of its intercity network formed an important part of the government's liability case because they demonstrated not only AT&T's anticompetitive conduct and intent but also its market power resulting from entry barriers that exist in the industry. These tariff restrictions, however, have subsequently been declared unlawful by the FCC and are no longer included in AT&T's tariffs.

⁶⁰The question of whether the decree should be construed to permit AT&T's entry into the information services market under the separate

requirement should be incorporated in the proposed modification.

2. *Access to AT&T's Network:* A number of parties also expressed concern that AT&T, which will continue to provide intercity transmission services to other firms competing in the information services market, would have the ability and incentive to discriminate against those firms with respect to the quality of transmission services provided and the dissemination of technical information about the AT&T network. The Department believes that in the long run, the growth of competition in the intercity market will also constrain AT&T's ability to discriminate against information services competitors who must lease transmission services, because those competitors will have an increasing supply of competitive alternatives available.

In any event, however, the Department believes that the types of anticompetitive conduct that could occur—e.g., provision of inferior quality circuits, delays in providing circuits, faulty repair of circuits and improper pricing of circuits—are best controlled, to the extent they can be controlled at all, through regulatory devices that are not particularly well-suited for use by either the Court or the Department. Given the transitional nature of the potential opportunity to engage in such conduct and the impracticality of relying on the enforcement mechanisms of a decree to guard against such conduct, the Department has elected not to embark on such a course as a part of the modification. It should be noted, however, that the regulatory authorities are presently considering, and would have the jurisdiction to implement, regulatory schemes directed at these potential problems.

3. *CATV:* Under the terms of the proposed modification, CATV service would be treated as an information service. As a result, the BOCs would be prohibited from providing CATV service, but AT&T would be free to enter that market if it chooses to do so. Various CATV interests have commented that they not only agree that the BOCs should be excluded from the market but believes that AT&T should be excluded as well. The Department does not agree with this position. In the past, the justification for prohibiting AT&T entry into the CATV business was the competitive advantage it enjoyed as a result of its control over the local franchises. The proposed modification eliminates AT&T's control over the local franchises and puts AT&T in the same position as any other

potential entrant in the CATV business—it must secure local franchise rights and construct local transmission networks. The fact that AT&T is a large company or that it possesses substantial technological expertise in the telecommunications field does not distinguish it from any of a number of potential entrants in this market.

C. Acquisition of Non-BOC Exchange Carriers

The proposed decree prohibits reacquisition of the divested BOCs by AT&T, but imposes no prohibition on the acquisition of non-BOC exchange carriers. The Rural Telephone Coalition and the Attorney General of Virginia expressed concern that AT&T may attempt to acquire such non-BOC exchange carriers. Such an acquisition would be subject to scrutiny by the FCC under Section 221 of the Communications Act, 47 U.S.C. 221, or by the Department of Justice under Section 7 of the Clayton Act, 15 U.S.C. 18. The Department, of course, would look with disfavor on any arrangement that would threaten to re-create an anticompetitive market structure. Any competitive concerns regarding such activity are, therefore, adequately protected under existing law.

D. Telecommunications Equipment Market

A number of commenting parties expressed the view that AT&T's dominant position in the intercity services market, coupled with its continued integration with Western Electric, would enable AT&T to engage in anticompetitive conduct in the telecommunications equipment market.

1. *Bias in Long Lines Procurement:* A substantial number of parties, particularly equipment vendors, asserted that because of the continued integration of Western Electric and Long Lines, Long Lines' procurement will continue to be biased in favor of Western Electric products following the entry of the proposed modifications. These comments argued that by selling its products to Long Lines at prices above competitive levels, Western Electric will be able to earn excess profits that can be applied to cross-subsidize anticompetitive conduct in other markets. These parties argued that to prevent potential cross-subsidies, Western Electric and Long Lines should be either subject to a separate subsidiary requirement, separately owned, or that Long Lines' procurement practices should be subject to regulatory devices such as the procurement injunctions imposed on the BOCs or a quota system.

It should first be emphasized that the Department's case in *United States v. AT&T* focused on procurement by the BOCs. The modification effectively resolves those problems. Even in the absence of remedies addressing Long Lines, however, there is little danger of cross-subsidies flowing from Long Lines to Western Electric. Even in the short run, AT&T will have strong incentives to procure equipment as efficiently as possible. Procuring equipment from Western Electric at supracompetitive prices would simply impose economic penalties on Long Lines not shared by actual and potential competitors. None of the comments appear to dispute this basic premise. Instead, the comments disagree with the view that interexchange competition will increase significantly in coming years.⁶¹ The critical point, however, is not the rapidity with which new competition actually emerges, but the fact that any attempt to engage in cross-subsidization by AT&T would merely increase the pace of new entry.

The Department, therefore, believes that there is clearly no need for further divestiture to deal with what many of the comments concede is at worst a transitional problem. In addition in light of the consequences to AT&T's competitive position in intercity markets of cross-subsidization between Long Lines and Western Electric, there would be no useful purpose served by imposing injunctions on Long Lines that would merely reinforce its own procurement incentives. As to the imposition of quotas, such purchaser requirements do not produce efficient procurement decisions. Indeed, a quota would amount to instructing Long Lines to procure equipment from vendors without regard to quality or price. Such an outcome would benefit neither ratepayers nor competition.

2. *Access to Network Standards and Technical Information:* A number of parties, particularly competitors of Western Electric asserted that Western Electric will continue to enjoy an anticompetitive advantage due to its unique access to the Bell Telephone Laboratories and the Long Lines Department. These comments noted the absence in the proposed modification of any requirement that AT&T provide network standards and technical information to competitors. Those commenting fear that AT&T will provide

⁶¹ The comments of Long Lines' intercity competitors, such as MCI and Southern Pacific, endorse the government's belief that effective interexchange competition will develop as a result of the proposed modification's functional divestiture.

Western Electric with preferential access to key interexchange network standards and technical information (while withholding this information from others), thereby establishing *de facto* network standards which, when combined with Long Lines' market power, will preserve AT&T's ability to impede competition in both the telecommunications equipment and CPE markets.

The Department believes, however, that the structure of the industry after the functional divestiture will encourage an increase in the flow of technical information to competitive manufacturers from both the divested BOCs and the Long Lines Department. The divested BOCs will control information concerning the provision of local exchange and exchange access service, and will necessarily have access to information concerning the provision of interexchange service necessary to interconnect with the facilities of Long Lines and other interexchange carriers. Section II(B)(2) of the proposed modification requires the BOCs to establish and disseminate technical information, interconnection standards and procurement standards. Accordingly, the Department expects that the divested BOCs will seek out competitive manufacturers and freely share technical information and standards once the BOCs' corporate and financial ties to Western Electric and Bell Laboratories have been severed by the entry of the modified judgment.

Long Lines will also have new incentives to disseminate technical information and standards widely. As discussed above, as non-discriminatory interconnection of other common carriers by the BOCs fosters competition in the market for interexchange services, Long Lines will experience an increasing need to procure facilities on the basis of quality and price, without regard to corporate affiliation, since any supracompetitive transfer prices for such equipment would only disadvantage AT&T in the market for interexchange services.

Therefore, as interexchange competition develops, Long Lines will lose its incentive to procure equipment from Western Electric solely because of its affiliation and, correspondingly, Long Lines will have increasing incentives to share network information more freely with non-affiliated manufacturers. In addition, as other long distance carriers become fully competitive with Long Lines, they will dilute Long Lines' power in the market for purchases of telecommunications equipment. Thus any advantage Western might enjoy

initially will become less important over time.⁶²

With respect to customer premises equipment, AT&T's superior access to network information will be greatly diminished, since the divested BOCs, the owners of the facilities to which CPE will be connected, will be the principal repositories of relevant network information. For the first time, the divested BOCs will have no incentive to deny such information to non-Western Electric manufacturers.

E. Issues Relating to AT&T's Market Power in the Provision of Customer Premises Equipment (CPE)

Comments filed by General Dynamics Communications Company ("GDCC") and others expressed concern that by virtue of AT&T's obtaining embedded customer premises equipment (CPE) as well as providing new CPE, AT&T will be able to maintain its dominance in the CPE market by implementing a "migration pricing" strategy. As described by GDCC, migration pricing is a strategy under which AT&T substantially increases the rates charged for currently installed and in use CPE (which would all be included in the category of embedded CPE). With the objective of shifting customers to newer generation AT&T CPE and locking these customers into long term leases for the new equipment.

The migration pricing issue was raised in the specific context of the telephone answering service (TAS) industry in the comments of Associated Telephone Answering Exchanges, Inc. ("ATAE"). According to ATAE, the TAS industry is almost exclusively dependent on the electromechanical 557B switchboards and associated concentrator-identifier equipment currently provided by the BOCs. ATAE asserted that due to reasons of business size and technology, many telephone answering services require this equipment, and that viable competitive alternatives do not exist for all telephone answering services. ATAE also stated that the BOCs have proposed large rate increases for this equipment, and many BOCs have proposed to obsolete or grandfather this equipment and replace it with a new equipment system called AUTOTAS. ATAE asserted that this represents an effort to migrate the TAS industry from the older vintage equipment to the new AUTOTAS. In order to deal with these concerns, ATAE requested that the proposed modification leave open the

⁶² In the event that problems regarding access to network information persist, the modification does not disturb the authority of the FCC to require dissemination of such information.

issue of the role of state regulation of embedded CPE, and/or that a forum be available during a reasonable transition period to resolve these concerns. A similar solution was requested in the comments of Answering Service, Inc. which stated that there should be continued regulation of AT&T's embedded CPE.

Over the long run, the Department of Justice does not believe that "migration pricing" could be a competitive problem. With respect to the majority of CPE, while raising rates for embedded equipment may induce customers to switch to new equipment, the customer will have a variety of competitive new generation equipment to choose from. AT&T thus could not be assured of retaining customers by such a strategy.

Furthermore, even in the case of a type of CPE for which no competitive alternatives are currently available (as claimed by ATAE for the equipment used by the TAS industry), by raising the rates for embedded CPE, AT&T over the long run will encourage entry into those areas where there are presently no competitive alternatives.

In the short run, the modification will have no effect on the regulation of embedded CPE, despite the fact that AT&T will own this equipment. The regulatory commissions remain free to adopt whatever approach to the regulation of embedded CPE provided by carriers as they deem appropriate.⁶³

The comments submitted by GDCC raised the issue that as a result of AT&T providing new CPE, Western Electric will be able to cross-subsidize CPE from its telecommunications equipment (*i.e.*, transmission and central office equipment) by attributing a disproportionate share of its costs to telecommunications equipment. The Department of Justice does not believe that this problem will occur. In order for such cross-subsidy to be effective, Western Electric would need monopoly power in the market for telecommunications equipment. However, the evidence presented in *United States v. AT&T* demonstrated the availability of competitive alternatives

⁶³ It may be that in some state, separation of ownership of the local franchise monopoly from ownership of CPE will raise a question whether the regulatory jurisdiction over CPE continues to apply. If and when such questions arise, however, they can be resolved completely by appropriate state legislation. If the state legislature believes that continued regulatory jurisdiction over embedded CPE is appropriate and desirable, the modification does not prevent legislation to that end. Of course, a state legislature also might decide that continued regulation is not desirable, but that possibility certainly does not suggest that the decree is inappropriate simply because it provides an occasion for state legislatures to make that choice.

for a wide range of Western Electric's transmission and switching equipment. These competitors were foreclosed, the government alleged, as a result of monopoly power resulting from the vertical integration of Western Electric and the BOCs. After this vertical integration is ended by the divestiture called for in the proposed modification, if the Western Electric attempted to cross-subsidize its CPE from its transmission and switching equipment, the correspondingly higher prices which would result for Western Electric's transmission and switching equipment would result in competitive losses for Western Electric in that market.

In addition, as set out above, because supracompetitive transfer prices between AT&T impose economic penalties on AT&T not shared by its competitors, the prospect of a Long Lines—Western Electric cross-subsidy seems equally remote. The Department, therefore, does not believe that any amendment to the modification in this regard is necessary.

VI. Telecommunications Equipment Issues

The Department received comments from a number of parties, principally telecommunications equipment vendors, which raised a number of issues relating to the impact of the modification on BOC procurement practices. Other commenting parties raised specific concerns regarding the modification's effects on AT&T trademarks and patents. These issues are addressed in the following discussion.

A. BOC Procurement

A number of comments, particularly those submitted by Western Electric's competitors, suggested that after divestiture Western Electric will continue to enjoy an unwarranted advantage in selling telecommunications equipment to the BOCs. Some of these comments questioned whether the injunctive provisions of the proposed modification will put an end to past BOC discrimination against Western's competitors, while others expressed concern that other provisions will encourage a continued BOC preference for Western Electric's products. Several other commenting parties predict that permitting the BOCs to centralize certain functions relating to procurement will discourage the growth of competition in the procurement of telecommunications equipment.

The Department believes that the divestiture called for by the proposed modification will, over time, eliminate any anticompetitive BOC bias in favor of Western Electric, and that the

injunctive provisions now included in the proposed modification are the most effective alternative for controlling any potential for BOC bias until the effects of divestiture are fully realized.

1. Adequacy of Anti-discrimination and Compliance Provisions: The key injunctive provisions of the modification intended to prevent BOC discrimination in favor of Western Electric are Section II(B)(1), which generally forbids such discrimination, and Section II(C), which requires that each divested BOC submit to the Department procedures for ensuring compliance with each of the antidiscrimination provisions of the proposed modification. Several comments expressed the fear that the objectives of these provisions may not be realized adequately due to the persistence after divestiture of certain conditions which are a consequence of AT&T's present vertical integration, and which might tend to confer unwarranted competitive advantages on Western Electric. For example, Western Union cited the advantage Western Electric might gain in the future because it is so frequently designated as the equipment supplier in the BOCs' current long range plans for expanding their facilities. Comments anticipating continuing discrimination in BOC procurement proposed a variety of provisions in the modification to supplement or replace the antidiscrimination and compliance provisions cited above. These comments generally suggested expanding the language of these provisions to impose more specific injunctive requirements on the BOCs. A number of other commenting parties proposed quasi-regulatory provisions such as the imposition of purchase quotas on the BOCs, requirements for detailed reporting of BOC purchases, or regulation of Western Electric's prices.

The reorganization required by the proposed modification, by separating the BOCs' regulated monopoly functions from equipment manufacturing, will create the most hospitable climate possible for competition in the sale of telecommunications equipment. This competitive structure will be reinforced by the antidiscrimination and compliance provisions of Paragraph II(B) and II(C) of the proposed modification. In light of the transitional nature of the incentives they are designed to counteract, the imposition of a general prohibition on discrimination, together with the BOCs' submission after divestiture of procedures to insure compliance, will enable the Department to verify that the BOCs are conducting their equipment procurement in a non-discriminatory manner. If the compliance procedures submitted by

any BOC do not appear likely to accomplish the objectives of the modification, the Department will file an enforcement action to compel appropriate modifications in the procedures.

In the Department's view, these flexible procedures are adequate to deal with the transitional problems identified in the comments until the procompetitive incentives created by divesting the BOCs have had their full effect. Indeed, the antidiscrimination and compliance provisions in the proposed modification are preferable to any of the alternatives suggested in the comments, many of which would impose on the Bell operating companies a detailed scheme of regulation, difficult at best to enforce judicially, which might well carry its own anticompetitive effects. For example, the imposition of quotas would necessarily entail detailed reporting requirements and product classification schemes, imposing substantial administrative burdens on the Court, the Department and the BOCs. A quota system, moreover, might in some cases deprive the BOCs of the choice to purchase the best and least expensive equipment or create a sheltered market for suppliers with competitively deficient products. Either result would be wholly at odds with the objectives of the antitrust laws, and of the modification. Other proposals, which would involve detailed reporting or price regulation schemes, are similarly flawed.

Other comments raised the possibility that a continuing pro-Western bias would be fostered by the requirement of Paragraph I(C) of the proposed modification that AT&T, Western Electric and Bell Laboratories provide the BOCs research, development, manufacturing and other support services on a priority basis until September 1, 1987, to enable the BOCs to fulfill the requirements of the proposed modification. This requirement does not modify in any way the applicability or force of the proposed modification's ban on discrimination in BOC procurement, and creates no priority for Western Electric or Bell Laboratories. Rather, it was included in the modification as a specific application of Paragraph I(C)'s requirement that "AT&T and its affiliates . . . take no action that interferes with the BOCs' requirements of nondiscrimination * * *." It was intended to ensure that the BOCs would have full access to the equipment and equipment-related services necessary to provide equal exchange access, and was included in recognition that the BOCs'

current facilities consist predominantly of Western Electric equipment, so that modifications or additions to provide equal access would often have to be provided by Western or Bell Labs.

The Illinois Commerce Commission suggested that the BOCs be permitted to purchase equipment on a sole-source basis, if that were most efficient. Nothing in the proposed modification would explicitly prohibit such a practice by a particular BOC, although the Department would scrutinize carefully any sole-source arrangement with Western Electric to assure compliance with the anti-discrimination provisions of the modification. Other sole-source purchasing arrangements would of course remain subject to the antitrust laws.

Finally, one commenting party, fearing AT&T efforts to disrupt general trade sales efforts prior to divestiture of the BOCs, urged that AT&T be forbidden to take actions to impair its existing procedures for procurement of general trade equipment. The Department has no reason to believe that AT&T will dismantle its existing procurement procedures in the period before divestiture. In any event, any action by AT&T to obstruct fully competitive procurement by the BOCs would violate Paragraph I(C) of the proposed modification, and the Department will monitor AT&T's activities to insure that such conduct does not occur.

2. Centralization of BOC Procurement Functions: Paragraph I(B) of the proposed modification permits the divested BOCs to support and share the costs of a centralized organization providing engineering, administrative and other services. A number of comments expressed concern over the effects if the BOCs conducted centralized purchasing under this provision. In particular, some comments asserted that a centralized purchasing agency would constitute a monopsony and thus violate the Sherman Act, and questioned the need for any such arrangement on efficiency grounds.

The purpose of a centralized staff is to end the BOCs' dependence on AT&T, Western Electric and Bell Laboratories for services that can most efficiently be provided on a centralized basis. The Department intends to review proposals for a centralized entity carefully to insure that its proposed functions are consistent with this goal.

Although several comments questioned whether centralization can ever be efficient, at least one independent telephone company, United Telecommunications, appears to recognize that such efficiencies are possible, recommending the inclusion of

independent telephone companies in the work of a central staff. Nothing in the proposed modification would prevent such a joint effort, provided it did not operate in such a way as to involve participation by the BOCs in activities prohibited by the proposed modification.

The Department will scrutinize with particular care proposals for joint purchasing activity, to assure that this activity violates neither the proposed modification's non-discrimination requirements nor limitations on joint activity imposed by the antitrust laws. A number of the comments seem to base their concern about a joint purchasing entity on the assumption that a single entity would be given exclusive discretion to make purchasing decisions on behalf of the BOCs. In discussions with the Department, AT&T, has given firm assurances that under the plan of reorganization purchasing will be undertaken at the regional or BOC level, not by a centralized entity. This commitment assures that there will be diverse decision-makers for the purchase of goods and services by the divested BOCs.

Finally, the Independent Telecommunications Suppliers Council urged that the proposed modification require the transfer to the BOCs of warehousing, distribution and product evaluation functions now centralized in Western Electric. According to the proposed modification, AT&T is required to transfer to the BOCs "sufficient facilities, personnel, systems and rights to technical information" to enable the BOCs to perform their permitted functions independently of AT&T. If, as the Department expects, the divested BOCs will require the ability to perform independently some product support functions now performed by Western Electric, it will be AT&T's obligation to transfer to the BOCs the capability to perform those functions.

B. Trademarks

Tandy Corporation filed comments in which it proposed adding to the modification a specific requirement "that neither AT&T nor a separate subsidiary of AT&T sell, offer for sale or advertise any terminal equipment using names, trademarks, service marks, symbols, or other methods of promotion or identification which are the same as or similar to, the names, trademarks, service marks or other methods of promotion or identification employed by BOC." The comments stated that such a provision was needed to prevent "non-monetary cross-subsidization". It was argued that by concurrent use of the same mark, AT&T could implicitly suggest to consumers a link between

Western Electric's CPE and the BOC's local service, or between Long Lines' intercity service and the BOCs' local service. Similarly, the argument continued, the BOCs could implicitly suggest that they endorsed use of AT&T's CPE or long distance service.

The proposed modification together with federal trademark law will prevent concurrent use of trademarks and trade names⁶⁴ by AT&T and the BOCs after divestiture. The existence of a licensing arrangement which would be the basis for such concurrent use would constitute economic and operational integration of a sort prohibited by the proposed modification. In any event, AT&T could not enter into a valid trademark or trade name licensing arrangement with the BOCs, because the modification does not permit AT&T to control the quality of services provided by the BOCs, and such quality control is required to maintain a valid trademark license.

Sections 5 and 45 of the Lanham Act, 15 U.S.C. 1055 and 1127, which regulate licensing of federally registered marks, permit such licensing only if the licensor imposes adequate quality controls on the licensee's products or services with which the mark is used. *E.g., Dawn Donut Co. Inc. v. Hart's Foods Stores*, 287 F. 2d 358, 366-67 (2d Cir. 1959). Common law trademark principles impose similar requirements for trade-names and other unregistrable marks. If a licensor fails to exert the necessary control, the trademark is considered abandoned, and enters the public domain.

The central feature of the proposed modification is the severance of existing economic and operational relations between AT&T and the BOCs, except insofar as certain explicitly identified transactions are permitted after divestiture. Concurrent use of the Bell System trademarks after divestiture would continue a relation in which, as Tandy Corporation suggests, AT&T and the BOCs would be unacceptably intertwined. Accordingly, the Department will not approve the plan of reorganization which contemplates the concurrent use of the Bell trademarks by AT&T and the BOCs.

C. Patent Licensing Issues

The Department received approximately 40 comments, mainly from competitors of AT&T, that criticize

⁶⁴The phrase "trademarks and trade names" as used here includes trademarks, service marks, trade names and all other similar types of intellectual property, whether or not registrable under provision of the Lanham Trademark Act, that have been used to identify the Bell System or portions of its business in the past.

the proposed modification because it does not retain in some form the provisions of the 1956 decree which required AT&T to license its United States patents to all applicants on a non-discriminatory, reasonable royalty basis. Some commenting parties would be satisfied with a phasing-out of the compulsory licensing requirement over some finite period of time; for example, all patents issued during a fixed period after the divestiture of the BOCs would be subject to compulsory licensing by AT&T but patents obtained beyond that time would not. Other comments proposed that the perpetual licensing requirements of the 1956 decree be retained. The Department does not believe that the inclusion of any form of compulsory patent licensing in the proposed modification is either necessary or appropriate.

At the outset, it should be recognized that, notwithstanding the elimination of the compulsory patent licensing provision, AT&T will continue to engage in extensive patent licensing. First, all or almost all of AT&T's existing U.S. patents have been licensed to a variety of firms for many uses. With very few exceptions, these licenses will run for the life of the patents involved and cannot be terminated unilaterally by AT&T. Second, AT&T's patent licenses typically include a provision for the licensing of new patents within the scope of the license issued within five years of the execution of the agreement. AT&T also had entered into more formal patent cross-licensing agreements which also typically run for a period of five years.

Finally, the reorganization plan will require AT&T to grant royalty-free licenses to the BOCs for all of its existing patents, and for all patents issued for a period of five years following entry of the proposed modification. In turn, the BOCs will have the right to sublicense these patents for their own use, including the manufacture of equipment for the BOCs' purchase. Thus, as a practical matter, many AT&T patents issued within the next several years must also be licensed to AT&T's competitors notwithstanding entry of the proposed modification.

In this environment of widespread licensing, including licensing by BOCs, there would appear little profit to AT&T in refusing to license a new entrant. Rather, AT&T would have every incentive to continue to issue licenses in view of the potential that licensees will find new uses for existing technology from which AT&T could gain royalty revenue, including royalties arising from a new entrants' sales of products.

Moreover, the communications industry has been characterized by extensive patent cross-licensing arrangements in the past. Given the dispersion of technology in the electronics, telecommunications and computer industries, it is likely that AT&T will find it in its interest to continue to license its patents in order to gain access to the patents of others.

Some comments argued that because AT&T research had been funded in part from monopoly exchange revenues, AT&T should be required to continue compulsory licensing for some period of time. The 1956 Judgment was, in part, based on the concept that research funded from revenues generated by AT&T's regulated telecommunications monopoly should be made available to AT&T's competitors in other markets. Consequently, the logic of the 1956 Judgment suggests that patents substantially derived from pre-divestiture research be licensed regardless of when the patent is issued. Because of the delay inherent in the patent application process, however, any cutoff date for the licensing of such patents is necessarily arbitrary. The date chosen by the proposed modification is the date of its entry. Because of the existence of requirements that AT&T license patents heretofore issued or issued during the next five years, and in view of the BOCs' sublicensing rights, it is apparent that a significant portion, if not all, of such "work in progress" patents will be licensed. Once such patents are licensed, as discussed, it will be in AT&T's interest to license them to others. Consequently, regardless of the date specified in the proposed modification for the vacation of the 1956 decree's licensing provisions, there is no reason to believe that entry of the proposed modification will result in the removal of "work in progress" patents from the pool of AT&T patents generally available to industry. Hence, in practice, the proposed modification fully protects the public's interest in the licensing of such patents.

Finally, suggestions that AT&T should be required to license its future patents based on post-divestiture research because of its dominant position in the intercity telecommunications service market are without merit. These comments assert that there is danger that AT&T will cross-subsidize research and development efforts in competitive fields with revenues obtained from its intercity services. For the reasons discussed above in Section V, the Department believes that there will be sufficient competitive pressure on all of

AT&T's intercity services that there is little danger of significant cross-subsidies flowing from the intercity services market, even in the short run. In the short run, of course, new AT&T patents will continue to be licensed under existing licensing agreements. AT&T will also have continuing incentives to license its patents in order to get the benefits of the inventions of others.

Most important, the proposed modification would terminate the license contracts under which research is funded in part by monopoly revenues. AT&T, like other firms, will thus be forced to fund its research and development from the sale of products and services in competitive markets. AT&T will, therefore, have no inherent advantage over other firms in funding such research and development.

VII. Effects of the Modification on Interests of Third Parties

The Department received a large number of comments, mainly from competitors of AT&T, which raised issues regarding the effects of the modification on the interests of private parties. Two principal concerns expressed in the comments relate to possible *prima facie* effect which may be given to the modification and the rights of private parties to seek enforcement of the modification. The Department also received a number of comments from AT&T investors and employees regarding the modification's effects on their interests. The following discussion addresses these issues.

A. *Prima Facie* Effects of the Proposed Modification

The concerns expressed on the comments on this issue stem principally from Section III of the proposed modification, which states, in pertinent part:

Neither this Modification of Final Judgment nor any of its terms or provisions shall constitute any evidence against, an admission by, or an estoppel against any party or BOC.

Section IV of the Department's Competitive Impact Statement, in discussing this provision, stated:

The proposed modification, if entered, would in no way affect the rights of any present (or potential) private plaintiff who has or might have been damaged by the alleged violations to sue for monetary damages and any other legal or equitable relief to which they might otherwise be entitled. Because, however, Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a), allows a judgment to be invoked as *prima facie* evidence in private litigation only

where the judgment operates as an estoppel between the parties, the proposed modification would not have such *prima facie* effect.

Some of the comments argued that the Court should treat the proposed modification of final judgment as a settlement of *U.S. v. AT&T*, on the ground that to do otherwise would permit the parties to circumvent the Congressional intent underlying Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), which deals with the *prima facie* effects of final judgments. Other comments argued that the Court should not enter the modification without first making specific findings of fact that could be used by private parties in subsequent litigation. Finally, it was argued that there is no need for this Court to decide the scope or effect of the modification on other litigation since that responsibility is committed to trial courts in subsequent litigation.

The proposed modification contains a stipulation between the United States and AT&T that it shall not constitute any evidence against, an admission by, or an estoppel against any party or BOC. This provision, by its terms, is therefore binding between the parties in any subsequent litigation.

Under relevant case law and Section 5(a) of the Clayton Act, the *prima facie* effect of a judgment is determined by reference to the general law of estoppel. Broadly stated, the estoppel effect or prior judgments is limited to matters actually adjudicated.⁶⁵ Thus, because there has been no final adjudication, without regard to any agreement between the parties, and regardless of whether the modification is treated as a settlement of *United States v. AT&T*, the Department believes that the modification would not be given *prima facie* effect in subsequent litigation. The Department agrees, however, with the point made in some of the comments that the ultimate responsibility for determining the *prima facie* effect of the modification rests with the trial court in any subsequent litigation.

B. Private Enforcement of the Modification

A number of comments argued that private parties should, under certain circumstances, be given the right to seek enforcement of the modification on the ground that the limited resources of the Department may result in ineffective enforcement. Some comments suggested

that since private parties are intended beneficiaries of the modification, they have a legitimate interest in independent enforcement. It was argued that permitting private enforcement would assist the Justice Department in its enforcement efforts.

The Department of Justice, while aware of the extensive non-party interest in the Modification of Final Judgment, is persuaded that no such procedure need be created at this time. First, the Court specifically retains jurisdiction over this judgment and its enforcement (Section VII of the modification), making it unnecessary, in the absence of any showing that the Department of Justice is unwilling or unable to enforce the judgment itself, to create further enforcement provisions on behalf of non-parties. Second, given the widespread non-party interest in the judgment, as demonstrated by the numerous comments, it is likely that such interest will also extend to enforcement. It can be expected that non-parties will communicate any alleged violations of the judgment to the Court, the Department, or both. Prior to any showing that the Department of Justice is unable or unwilling to investigate and, if warranted, to prosecute such allegations, no formal procedure for non-party enforcement is necessary. Should such a showing be made, the Court, pursuant to its retention of jurisdiction, may at that time order such procedures as it deems necessary.

The Department is aware of only one instance in which specific provision was made for private parties to petition the court for enforcement. In *United States v. AMPI*, 394 F. Supp. 29, 56 (W.D. Mo. 1975), the court established a detailed procedure for enforcement of its judgment. Under the court's supplemental order, private parties were required first to petition the Department to institute an enforcement action. Within 20 days, the Department was required to respond to the complaining party in writing setting out its intended course of action and the reasons therefor. In the event the Department failed to take action deemed appropriate by the complaining party, the complainant could then suggest to the court that it exercise its independent power and jurisdiction to direct enforcement proceedings on its own motion.

Thus, even in the *AMPI* case, private parties were not given a right of private enforcement. Rather, the court simply set out procedures for informing it of circumstances that might lead it to establish enforcement proceedings on its

own motion. The Department does not believe that such detailed procedures are likely to promote effective enforcement of the modification. Rather, such procedures are more likely to lead to repeated complaints to the Department and the Court, each time triggering mandatory deadlines and filings which would interfere with, rather than advance, the Department's enforcement efforts. In addition, such procedures may have unintended consequences. For example, the requirement imposed in *AMPI* that the Department respond in writing within 20 days of receiving a written complaint has already obstructed enforcement by providing a defendant in that case with an estoppel argument that it would not otherwise have had.

Even in the absence of such procedures, the modification would not impair the ability of private parties to bring to the attention of the Court information which might lead it to direct enforcement proceedings on its own motion. The Department, therefore, believes that the establishment of special procedures for private enforcement is both unnecessary and likely to be counterproductive.

C. Investor Interests

A number of AT&T stockholders have expressed concern that divestiture of the BOC's will adversely affect the value of their investment and jeopardize future dividends. AT&T currently contemplates that the 22 BOC's will be divested into seven regional holding companies holding roughly two thirds of current Bell System assets; AT&T will control the remaining one third of the assets. Stockholders' interests will be divided between stock in AT&T and proportional values in the newly separate holding companies. Thereafter, shareholders can decide whether to retain all or part of their investment.

The Department believes that shareholder interests will not be adversely affected by the modification. AT&T stock currently in the hands of investors represents an investment in the total Bell System—AT&T and each of its units, including the 22 companies to be divested. Upon divestiture, shareholders will continue to hold ownership in the *same assets* currently represented by their investment, which they may retain or dispose of as they wish. The divestiture required by the modification, therefore, will not change ownership interests currently represented by an investment in AT&T stock.

While it is not possible to predict with absolute confidence the future earnings

⁶⁵ See e.g., *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968); *Emich v. General Motors Corp.*, 340 U.S. 558 (1951); *Orbo Theater Corp. v. Loew's Inc.*, 156 F. Supp. 770 (D.D.C. 1957), *aff'd*, 261 F.2d 380 (D.C. Cir. 1958), *cert. denied*, 359 U.S. 943 (1959).

potential of an investment in AT&T or in the BOCs, it is unlikely that the modification will adversely affect the value of the portfolio of AT&T and BOC stocks investors will hold following divestiture. Indeed, by removing restrictions on the business in which AT&T may engage, it is likely that the modification will have the effect of increasing the value of that investment. Of course, as in the past, the earning potential of such stock, particularly that of the BOCs, will be determined in large measure by the actions of regulatory authorities.

The Department received some comments from BOC bondholders which expressed concern regarding the continuing quality of their investments. As discussed above, the Department will review the reorganization plan carefully to insure that the BOCs begin operations on a sound financial basis. This would include an ability on the part of the BOCs to meet their debt obligations. As companies providing franchised monopoly services, there is no reason, with the application of established regulatory principles, that the BOCs will not continue to operate on a secure financial basis.

D. Employee Rights

The Department received a small number of comments, from labor organizations, the California Department of Consumer Affairs, the Kentucky Public Service Commission, and others, which raised questions regarding the effect of the modification on employee rights. The Communication Workers of America ("CWA") and the Federation of Telephone Workers of Pennsylvania ("FTWP") expressed concern that the modification not impair rights under existing agreements or otherwise reduce the protection afforded employee and their collective bargaining representatives under applicable laws. CWA was also concerned that the modification not bar national or regional bargaining. The Kentucky Public Service Commission argued that the BOCs should be divested immediately and should not be required to assume certain existing labor contract obligations

protecting job, pay, and seniority benefits. Both CWA and FTWP urged that the modification include explicit provisions protecting the right of employees affected by the reorganization comparable to those contained in pending legislation designed to deal with the creation of separate subsidiaries.

The modification will not have any effect on the rights of current employees under current collective bargaining agreements. Assuming that the divestiture of the BOCs takes place before the expiration of current contracts, they will remain in full force. Should the divestiture occur after the expiration of these contracts, there is nothing in the modification that would interfere with the rights of employees and the BOCs to enter into new agreements to be binding following divestiture. The modification simply leaves unaffected the rights of employees under current arrangements. Nor does the modification reduce or otherwise impair any employee protections guaranteed under applicable laws.

As to the ability of the BOCs to bargain on a national or regional level, the modification does not change existing law with respect to such bargaining. Nor does the modification itself preclude the BOCs from engaging in such collective bargaining.

The Department does not believe that it is either necessary or appropriate to include in the modification explicit provisions regarding employee rights. As discussed above, the ability of employees to negotiate satisfactory arrangements with the BOCs and AT&T will remain unaffected by the modification. As CWA noted, it and AT&T negotiated in August 1980 a Memorandum of Agreement protecting the rights of transferred employees. There is no reason apparent from the comments why collective bargaining will not prove to be a satisfactory mechanism for achieving whatever arrangements are appropriate for the protection of employee interests affected by the reorganization.

VIII. Conclusion

The Department has carefully considered the comments submitted. The proposed modification is fully consistent with the relief sought by the Government. It will result in a reorganization of the Bell System that will remove structural impediments to competition in the telecommunications industry, and allow efficient and rapid development of competitive telecommunications markets. Under the applicable legal standards, the proposed modification is in the public interest. Accordingly, the Department respectfully requests the Court to enter the proposed modification as its Final Judgment.

Respectfully submitted,
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May 20, 1982.

Certificate of Service

I, James P. Denvir, one of the attorneys for the United States, hereby certify that I have on this day served the *Response of the United States to Public Comments on Proposed Modification of Final Judgment* on defendants by delivering a copy thereof to: George L. Saunders, Jr., Esq., Sidley & Austin, c/o AT&T, 499 South Capitol Street, 8th Floor, Washington, D.C. 20003.

James P. Denvir.

May 20, 1982.

[FR Doc. 82-14229 Filed 5-26-82; 8:45 am]

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Register

Thursday
May 27, 1982

Part IV

Environmental Protection Agency

Friable Asbestos-Containing Materials in
Schools; Identification and Notification

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS 61004B; TSH-FRL 2064-3]

Asbestos; Friable Asbestos-Containing Materials in Schools; Identification and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA issues this rule to reduce risks to human health from exposure to asbestos-containing materials in school buildings. The rule requires public and private elementary and secondary schools in the United States to identify friable asbestos-containing building materials, maintain records and notify employees of the location of the friable materials which contain asbestos, provide the employees with instructions on reducing exposures to asbestos, and notify the School's parent-teacher association of the inspection results. School districts are encouraged to consult with EPA Regional Asbestos Coordinators when complying with the rule and, where asbestos-containing materials are found, to consult with EPA regarding corrective actions. A school that has already inspected, sampled, and analyzed the friable asbestos-containing material according to the procedures in this regulation need only comply with the recordkeeping and notification provisions of the rule. Schools that determined that they contain no friable asbestos-containing materials prior to the effective date of this rule, need only certify these results and retain the certification statement in their files. Schools need not repeat sampling and analysis under any circumstances.

DATES: This rule becomes effective June 28, 1982. Local education agencies must comply with all portions of this rule by May 27, 1983.

ADDRESS: The public record for this rulemaking is located at Rm. E-107, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, and is open to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-511, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

EPA has prepared several major support documents for this rule. These documents have been added to the rulemaking record. Copies may be obtained by calling EPA at the telephone numbers given above.

SUPPLEMENTARY INFORMATION: OMB Control Number: (2000-0463).

I. Introduction

The purpose of this rule is to protect users of school buildings from unwitting exposure to concentrations of airborne asbestos which occurs when friable asbestos-containing materials are damaged or disturbed. Compliance with this rule will both ensure that these materials are identified and that school users are notified of their presence so that they can prevent or reduce release of asbestos. This rule is needed because many school districts have not responded adequately to EPA's effort under the Technical Assistance Program (TAP) to encourage schools to identify these materials and notify employees of their presence.

Each local education agency is required to: (1) Inspect all areas of each school building within the agency for friable materials applied to structural surfaces in the building; (2) Take at least three samples of each distinct type of friable material found; and (3) Have those samples analyzed for their asbestos content using polarized light microscopy augmented by x-ray diffraction if necessary. Each local education agency shall also keep a record of the findings of all inspections, sampling, and analyses conducted in accordance with this rule.

After inspection, sampling and analysis have been completed, if a school does not have friable asbestos-containing material, no further action is required. However, in a school with friable asbestos-containing materials, the local education agency is required to inform all employees of the location of these materials and to provide each custodial or maintenance employee with a copy of "A Guide For Reducing Asbestos Exposure". See § 763.111 (b) and (c) of the rule (proposed § 763.6(b)). The parent-teacher groups of schools found to contain friable asbestos-containing materials shall be notified of the presence of friable asbestos. The purpose of notification is to inform people where there is a potential problem from the release of friable asbestos fiber in schools. In order to reduce the costs associated with notification, the Agency has decided not to require notification where there are no friable asbestos materials.

Compliance with these requirements will ensure that potentially hazardous

materials are identified and that school users are notified of their presence so that they can reduce or prevent the release of asbestos from them. This should eliminate much unnecessary exposure due to lack of knowledge of the presence of asbestos.

Many of the friable asbestos-containing materials in schools do not require abatement or removal. A reasonable effort by school officials to manage the materials can prevent damage to or deterioration of them and the consequent release of asbestos and exposure of school users. This is particularly the case where access to the materials is limited (e.g., material in a boiler room or behind a false ceiling) and the persons using the area can be instructed to avoid contacting or disturbing the material and to take necessary precautions when their jobs require that they work with the material. EPA strongly recommends that, where a local education agency determines that a management program for friable asbestos-containing material is the most appropriate response, the local education agency should institute a program to advise and educate its employees of the need for caution and proper procedures. Such a management program should also include a provision for periodic reevaluation of the material to determine whether the management program has prevented further damage or deterioration.

Some asbestos-containing materials identified when complying with this rule may be determined to require corrective action such as removal, encapsulation with a sealant which improves the cohesive strength of the material, or enclosure behind a barrier to prevent access. EPA has issued guidance both for identifying materials which should be controlled because of greater exposure potential and for procedures to be used when engaging in corrective activities (see "Asbestos-Containing Materials In School Buildings: A Guidance Document," which can be obtained by calling the toll-free number. Supervisors of public school districts and private schools will be automatically sent the Guidance Document and need not call). Chapter 7 of the Guidance Document lists the factors which should be considered when determining whether to take corrective action.

Abatement is often needed whenever the friable asbestos-containing material is visibly damaged and easily accessible or has inherently poor cohesive strength. Material which is separating from the surface to which it is applied, is separating into layers, or is otherwise

heavily damaged should be considered for removal. If damage is due to water, the cause of the damage (e.g., a roof leak) should also be corrected. Again, the amount of asbestos-containing material requiring abatement compared to the total amount of material in school buildings is small.

Local education agencies which desire assistance in determining an appropriate course of action for particular materials should contact the Asbestos Coordinator at the USEPA Regional Office in their area. The addresses and phone numbers of the Asbestos Coordinators are:

EPA Region I

Asbestos Coordinator
Air and Hazardous Materials Division
JFK Federal Bldg.
Boston, MA 02203
(617) 223-0585

EPA Region II

Asbestos Coordinator
Room 1013
Woodbridge Avenue
Edison, NJ 08837
(201) 321-6668

EPA Region III

Asbestos Coordinator
Curtis Building
Sixth and Walnut Streets
Philadelphia, PA 19106
(215) 597-9859, 597-8683

EPA Region IV

Asbestos Coordinator
345 Courtland Street
Atlanta, GA 30365
(404) 881-3864

EPA Region V

Asbestos Coordinator
230 S. Dearborn St.
Chicago, IL 60604
(312) 886-6003

EPA Region VI

Asbestos Coordinator
First Internat'l Bldg.
1201 Elm Street
Dallas, TX 75270
(214) 767-2734

EPA Region VII

Asbestos Coordinator
324 East 11 Street
Room 1500
Kansas City, MO 64106
(816) 374-6538

EPA Region VIII

Asbestos Coordinator
1860 Lincoln Street
Denver, CO 80295
(303) 837-3926

EPA Region IX

Asbestos Coordinator
215 Fremont Street
San Francisco, CA 94105
(415) 974-8123

EPA Region X

Asbestos Coordinator
1200 Sixth Avenue
Seattle, WA 98101 (206) 442-2888.

Although this rule does not require reporting of information to EPA, school districts are encouraged to contact EPA for assistance. EPA has worked closely with many States in providing training and technical assistance to school districts. The Regional Asbestos Coordinator will provide technical recommendations, provide additional State or local asbestos experts for assistance, or, in some cases, be able to provide training to the local education agency on the factors affecting abatement decisions. EPA is extending the compliance period for this rule by six months to ensure that school districts have sufficient time to consult with the Agency, if desired, after finding asbestos in their schools.

A. Background

"Asbestos" refers to a group of hydrated mineral silicates which readily separate into fibers. Asbestos-containing materials have been used widely for fireproofing, thermal and acoustical insulation, and decoration in building construction and renovation. These materials usually were applied by spraying, but also have been trowelled onto overhead surfaces, steel beams, ceilings, walls, furnaces, and pipes.

Asbestos is a known human carcinogen. Extensive epidemiologic evidence demonstrates that inhalation of asbestos can lead to pleural and peritoneal mesothelioma, lung cancer, asbestosis, and other diseases which are serious, irreversible, and often fatal. Asbestos has been responsible for the premature deaths of many persons who worked with the types of insulating materials now found in some schools.

The potential for release of asbestos fibers from asbestos-containing materials depends in part upon the characteristics of the material which contains the asbestos fibers. Soft, crumbly materials tend to release fibers more easily than do hard, cementitious materials. This regulation addresses friable materials, which are defined as all materials that when dry may be crumbled, pulverized, or reduced to powder by hand pressure.

Asbestos fibers are extremely durable, and their size and shape permit them to remain airborne for long periods

of time. Fibers become suspended in the air by disturbance of the friable asbestos-containing materials or deterioration causing the material to release fibers, and by resuspension of previously released fibers that have settled onto floors and other surfaces. Resuspension of asbestos fibers that have settled may result from many different activities, including dusting, sweeping, vacuuming, and even ordinary movement in the vicinity of the settled fibers. This process of release and resuspension of asbestos fibers results in continued dispersal of asbestos fibers throughout the building.

B. EPA's Program

EPA issued a Notice of Proposed Rulemaking in the Federal Register of September 17, 1980 (45 FR 61966) regarding the identification of friable asbestos-containing material in schools. EPA held a public hearing on this proposal on November 17, 1980, and has received comments from 63 parties on the proposal. EPA has analyzed and responded to these comments in "Analysis of Comments on the Proposed Rule for Identification and Notification of Friable Asbestos-Containing Materials in Schools" (hereinafter "Analysis of Comments").

EPA's Science Advisory Board (SAB) reviewed the "Support Document—Asbestos-Containing Materials in Schools—Health Effects and Magnitude of Exposure" (hereinafter "the Technical Support Document") which was published with the proposal and which presents EPA's findings on the risk of exposure to asbestos in schools. The SAB met on December 2-3, 1980, to discuss the document with EPA personnel. The SAB found the risk assessment scientifically credible and made several recommendations for improving the document. EPA has considered these recommendations when preparing the final Technical Support Document published with this rule. The transcript of the meeting and a report of the SAB's recommendations with respect to the document have been added to the rulemaking record.

This final rule implements that proposal, which was made after the Agency had operated a Technical Assistance Program (TAP) for 18 months to help school districts identify and correct potential hazards due to asbestos in schools. The TAP continues to provide assistance to schools. In each EPA Regional office, there is a person to respond to inquiries and help school officials locate necessary services. In addition, each EPA region has a technical advisor, hired and trained

under a grant to the National Retired Teachers Association/American Association of Retired Persons, to assist schools.

A number of comments on the proposal urged EPA not to impose regulations in this area, some arguing that the TAP is sufficient. EPA finds, however, that it is necessary to promulgate this rule because many schools have not been inspected adequately. For example, EPA estimates that 30 percent of the schools in the 11 States in EPA Regions V and VI had not been inspected as of August, 1981. If this proportion applies to the nation as a whole, 33,000 public and private schools remain uninspected. Further, a number of States either have not surveyed their schools at all or have not surveyed their schools adequately, such as the case in one State where analysis of samples looked only for chrysotile asbestos (see Analysis of Comments, pp. 2-3).

In May of 1979, EPA distributed "Asbestos-Containing Materials in School Buildings: A Guidance Document" (hereinafter "the Guidance Document") to school districts across the country. EPA also has prepared "Asbestos-Containing Materials in Schools: Guidance for Asbestos Analytical Programs," which provides additional guidance on taking samples of friable materials and on selecting laboratories to analyze these samples.

General information on EPA's TAP, copies of the Guidance Document, and a list of laboratories may be obtained by telephoning the numbers given above. Finally, EPA operates a toll-free, technical assistance number (800-334-8571, extension 6741) especially for school districts and laboratories which need up-to-date information on analysis, including results of subsequent rounds of the quality assurance program.

Comments on the rule stated that EPA should do more to ensure proper analysis of samples of friable material, perhaps including certification of laboratories or analysis by EPA laboratories. EPA finds that, with the guidance and assistance EPA provides, school districts can obtain satisfactory analysis of their samples when acting in accordance with the requirements of this rule (see Analysis of Comments, pp. 35-38).

C. Education Department Assistance

On May 16, 1980, the U.S. Congress passed the Asbestos School Hazard Detection and Control Act of 1980. In the Federal Register of January 16, 1981 (46 FR 4536), the Education Department (ED) issued rules to implement a Federal grant and loan program under the Act to assist local education agencies in

detecting and controlling asbestos hazards. Funds have not been appropriated by Congress for this program.

Comments on EPA's rulemaking suggested that the ED program makes rules under the Toxic Substances Control Act (TSCA) unnecessary. EPA finds, however, that the availability of grants, if funding occurs, to cover one-half the cost of detection programs is not in itself sufficient incentive to ensure that schools will be inspected and school employees notified. Since ED does not have authority to require these actions, EPA is requiring them under TSCA (see Analysis of Comments, p. 2 and p. 7).

II. Legal Authority

TSCA section 6 requires the Administrator to regulate the use of a chemical substance or mixture that the Administrator finds presents an unreasonable risk of injury to human health or the environment. The finding of unreasonable risk involves a balancing of the risk, including the severity and probability of injury, with the adverse effects of possible regulatory action.

If the Administrator finds that a substance presents an unreasonable risk, TSCA section 6(a)(3) authorizes the Administrator to promulgate:

A requirement that such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator.

Thus section 6(a)(3) authorizes EPA to require school officials to provide warnings to school employees of the location of asbestos and instructions on how to reduce exposures. In order to determine whether a school is subject to the warning and instruction requirements, school officials will have to inspect for and identify friable asbestos-containing materials; therefore, such inspection and identification are required under this same provision of section 6 by this rule.

III. Findings

This unit summarizes the findings required by TSCA for the Administrator to regulate friable asbestos-containing materials under section 6(a) of TSCA.

A. Findings Required By Section 6(c) of TSCA

This part presents the statement required by section 6(c) of TSCA.

1. Health effects of and magnitude of exposure to asbestos—

a. *Health effects.* A detailed discussion of the health effects findings appears in Chapter 3 of the Technical Support Document. Although several comments strongly criticized several aspects of the Agency's proposed findings on the health effects of asbestos (see Analysis of Comments, pp. 9-10), no one contested the finding that exposure to asbestos increases risks of developing asbestosis, pleural and peritoneal mesothelioma, and cancers of the lung, larynx, oral cavity, esophagus, stomach, colon and kidney. Nor did anyone dispute the finding that the effects of exposure to asbestos are serious, irreversible, and often fatal.

EPA emphasizes the strength of the epidemiologic evidence that exposure to asbestos is a cause of cancer. In a major study of over 12,000 asbestos insulation workers, cancers induced by asbestos were responsible for elevating the overall mortality rate by approximately 50 percent. Seventeen percent of all deaths in this group were due to asbestosis, pleural mesothelioma, or peritoneal mesothelioma. These causes of deaths are virtually unheard of in the general population. The International Agency for Research on Cancer has listed asbestos among only 18 chemicals, groups of chemicals, and industrial processes for which the evidence of human carcinogenicity is conclusive.

In addition, EPA finds that adverse health effects of non-occupational exposure to asbestos have been amply demonstrated. Some persons whose only known exposure to asbestos has been from living in the same households as asbestos workers or in the neighborhoods of asbestos mines, mills, and processing facilities have developed mesothelioma and signs of asbestosis (see Technical Support Document, pp. 30-34 and 44-48).

b. *Magnitude of exposure in schools.* EPA finds that the prevailing airborne concentrations of asbestos (concentrations of asbestos present most of the time in occupied areas) in school buildings which have friable asbestos-containing materials are frequently higher than asbestos concentrations in the ambient air. The specific airborne concentration in a given building at a given time depends, however, on such factors as the condition and accessibility of the friable material, the amount of activity, and cleaning methods used in the building.

EPA estimates that the prevailing exposure to asbestos in schools with friable asbestos-containing materials ranges from 57 to 270 nanograms per cubic meter (ng/m³). Prevalent levels

could become as high as 500 ng/m³ as friable asbestos-containing material further deteriorates or is damaged (see Technical Support Document, pp. 68-74). Several comments questioned EPA's method of estimating prevailing concentrations, noting that the data used came from buildings in Paris and that not all of the available data points were used. EPA has carefully reconsidered these estimates and finds that they are reasonable representations of exposure to asbestos in U.S. schools. Measurements of airborne asbestos in U.S. schools are not significantly different from the Paris data (see Analysis of Comments, pp. 23-25). EPA notes that measurements from Paris were selected from buildings in which friable asbestos-containing materials were exposed and in which there was normal activity, e.g. the simple comings and goings of people, at the time of measurement. These data most closely fit the situation in schools when students are present. Moreover, prevalent concentrations in schools with intact friable materials are not the main concern of this rule.

This rule is addressed to the control of "peak" exposures. Peak exposures can be much in excess of the prevailing concentration of asbestos in buildings and occur during damage, repair, renovation, or cleaning, when the friable asbestos-containing material is contacted, or settled asbestos fibers are resuspended.

Peaks up to 500,000 ng/m³ may be common due to simple maintenance or cleaning chores or to vandalism and other damage (see Technical Support Document, pp. 80-84). This is at least 1000 times higher than the prevalent levels discussed above. Although EPA has documented these high exposure levels and considers them significant, EPA has not been able to quantitatively estimate the contribution which peaks make to cumulative exposure among school children and teachers because of the extreme variability in the occurrence of such peaks.

However, EPA emphasizes that peaks contribute significantly to exposure, even if they occur intermittently and for short periods. As an illustration, a person exposed to a peak of 500,000 ng/m³ for one hour inhales as much asbestos as one exposed to 250 ng/m³ over a full work year. Given that these peak exposures are likely to be repetitive (unless proper precautions are taken), this mode of exposure may predominate.

Currently, an estimated 2,990,000 students and 269,000 teachers and staff, including 17,200 janitors and maintenance personnel, regularly use

the 8,600 public schools estimated to have friable asbestos-containing materials in the United States (accurate estimates for non-public schools cannot be made at this time). Many of these persons, especially maintenance personnel, can be exposed regularly to peaks during routine repairs, cleaning, or renovation.

c. Risks due to exposure in schools. EPA finds it highly likely that exposure to asbestos in schools may increase the risk of developing numerous types of cancer, most notably pleural and peritoneal mesothelioma and lung cancer. This finding is based on:

(1) Incontrovertible epidemiologic evidence that occupational exposure to asbestos markedly increases the risk of developing several types of cancer and asbestosis.

(2) Evidence that both less intense and briefer exposures to asbestos, as may occur in the neighborhoods of asbestos processors or in the homes of asbestos workers, can produce mesothelioma and signs of asbestosis in some individuals.

(3) Demonstrated airborne concentrations of asbestos in buildings with friable asbestos-containing material which can be above urban ambient levels, especially peaks which can exceed occupational standards.

The conclusion that a risk due to exposure in schools can exist is supported by studies that demonstrate a relationship between exposure to asbestos and the risk of cancer resulting from workplace concentrations of airborne fibers.

A key to EPA's assessment of the risk from asbestos exposure in schools is an epidemiologic study which covered more than 12,000 asbestos insulation workers who were exposed to asbestos for at least 10 years and who had survived at least 20 years after first exposure before their mortality experience was observed. The estimate of attributable cancer risk from this study is 7 deaths per 1000 workers per year of observation (7 deaths per 1000 person-years). The attributable risk is the difference between observed and expected death rates for asbestos-induced diseases in an exposed group. This difference represents the number of deaths resulting annually from asbestos exposure in a population of a given size. The 95 percent confidence interval for this estimate (a way of reflecting the role of chance variation) is a range of 6 to 8 deaths per 1000 person-years. The average exposure incurred by these workers is estimated to have been between 100,000 ng/m³ and 500,000 ng/m³ for 20 years.

The cumulative exposure of the insulation workers greatly exceeds exposures expected to occur in schools, especially that of students. EPA has considered plausible models for assessing risk at low levels, including the possibility that a threshold at or above the exposure levels in schools exists and that exposure below this threshold would not increase risk. Based on these considerations, EPA has determined that there is a non-zero risk of cancer due to exposure to asbestos in schools.

Especially important to EPA's assessment of risk are the peak exposures incurred by persons who, perhaps unknowingly, work on friable asbestos-containing material. It would not be unusual for a custodian to receive 10 times the cumulative exposure EPA has estimated for prevailing levels by sustaining peak exposures during normal custodial activities.

Comments on the proposed rule questioned both the estimate of exposure among the insulation workers (3,000,000 to 15,000,000 fibers per cubic meter (f/m³)) and EPA's factor for converting fibers to nanograms (30 fibers equal 1 nanogram). The comments stated that exposure among the workers may have been higher than estimated by EPA, so that the risk attributed to the lower exposure in schools would be lower than predicted by EPA. EPA finds that its estimated exposure levels are reasonable (see Analysis of Comments, pp. 14-18).

2. Environmental effects. Section 6(c) requires the Administrator to state the relevant factors and key considerations which form the basis for regulatory action under section 6(a). This regulation addresses risks to human health. EPA finds that the environmental effects of asbestos exposure are not relevant to this rulemaking, a finding not contested by public comment.

3. Benefits of asbestos in schools and availability of substitutes. EPA finds that it is not necessary for this rulemaking to publish a detailed review of the benefits of asbestos use in schools or the availability of substitutes. As noted in the proposal (45 FR 61971), this rule does not require schools to forego the benefits of asbestos, a point upon which there was no public comment.

4. Economic effects. This unit presents EPA's determinations of the economic consequences of the regulation as required by section 6(c)(1)(D) of TSCA.

Using data obtained from a variety of sources, EPA computed the unit costs of the major individual actions required by the rule (inspection, sampling and analysis of materials, recordkeeping,

and notification of employees), and estimated the rule's impact on individual schools.

EPA estimates that the overwhelming majority of schools will each spend less than \$55 on compliance with the regulation, and that the total cost for all schools will be approximately \$4.7 million. Table I presents the average school costs for the required actions. Details on these computations are in the preamble to the Proposed Rule (45 FR 61971) and in Chapters II and III of the "Economic Impact Analysis of the Final Identification and Notification Rule on Friable Asbestos-Containing Materials in Schools," a separate document EPA has entered into the rulemaking record.

TABLE I.—AVERAGE UNIT COSTS

Action	Unit Cost
Familiarization with rule	\$10.00
Inspection	21.00
Sampling	25.00
Analysis	150.00
Recordkeeping:	
For schools with friable material	25.00
For schools without friable material	10.00
Certification statement for schools which determine no friable asbestos material prior to rule	5.00
Notification:	
For schools with asbestos	42.50
Recordkeeping (Unit cost for a school district)	20.00

There are approximately 91,000 public and 19,000 private elementary and secondary schools in the country. The 91,000 public schools are organized into about 16,000 school districts. Many schools have already been inspected and, where necessary, have sampled and analyzed friable materials, in response to State programs or to EPA's TAP. These schools will not have to repeat inspections, sampling, and analyses in order to comply with this rule. The number of public and private schools which remain to be inspected is approximately 44,000. EPA estimates that the total number of public and private schools with friable materials may be as high as 14,000.

Table II presents the total estimated cost of compliance.

Several comments on the proposal questioned the cost estimates, stating that the unit costs were either too high or too low, or that the impact analysis should also include the cost of corrective actions, e.g. removal of asbestos, which schools may be forced to take. One comment contested the estimated number of schools with friable asbestos-containing material.

TABLE II.—COMPLIANCE COSTS

Action	Unit cost	Schools affected	Total cost (in thousands)
Familiarization	\$10.00	44,000	\$440
Inspection	21.00	44,000	924
Sampling	25.00	5,600	140
Analysis	150.00	5,600	840
Recordkeeping:			
For schools with friable material	25.00	14,000	350
For schools without friable material	10.00	38,400	384
Certification statement for schools which determine no friable asbestos material prior to rule	5.00	57,600	288
Notification:			
For schools with asbestos	42.50	10,300	438
Recordkeeping (for school districts and private organizations)	20.00	19,000	380
Total cost			4,184

EPA finds no basis to conclude that the estimates should be changed (see Analysis of Comments, pp. 27-28).

5. *Other EPA statutes.* Section 6(c) of TSCA also requires that if the Administrator determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law administered by EPA, the Agency may not promulgate a rule under section 6(a) of TSCA to protect against the risk unless the Administrator finds it is in the public interest to use TSCA. EPA finds no other law administered by the Agency that will enable it to eliminate or reduce the risks against which this rule protects. This proposed finding was not commented on by the public.

B. Findings Required by Section 6(a): Unreasonable Risk

On the basis of the foregoing factual information and on the information in the rulemaking record weighed against the minimal costs imposed by this rule, EPA finds that the presence of unidentified friable asbestos-containing materials in schools and the absence of notice of their presence and of instructions on proper handling and maintenance procedures to reduce exposure constitute an unreasonable risk of injury to school employees. These unreasonable risks can occur when school employees unknowingly disturb friable asbestos materials or such materials are allowed to deteriorate. When activities by school employees disturb or promote deterioration of friable asbestos materials, risk to users of school buildings may be elevated. Therefore, the Agency finds that this rule is needed to prevent such activities as lead to unreasonable risk.

The scientific evidence compiled by EPA demonstrates that asbestos is a

human carcinogen. EPA places great weight on an epidemiologic study of a large cohort of asbestos insulation workers who were exposed to the same type of asbestos as that present in schools. The Agency finds it highly significant that, out of a group of over 12,000 persons, approximately one-half of those who died during the time the data were compiled died prematurely as compared to a non-exposed control population.

The study of asbestos insulation workers is especially valid for assessing risks. It covered a relatively large number of persons exposed to materials similar to those in schools. In addition, the study investigated all the known hazards of exposure to asbestos, verified cause of death for most of the cohort, included smoking history data, and compared the mortality rate of the cohort to that of a group selected to avoid confounding factors.

EPA also has substantial evidence of mesothelioma and asbestosis among persons exposed to asbestos because they lived in the same home as an asbestos worker or in the neighborhood of an asbestos plant. EPA has determined that this evidence, especially in light of the large number of persons exposed in schools, justifies imposing the very low cost requirements contained in this rule.

The presence of unidentified friable asbestos-containing materials in school buildings increases significantly the likelihood that peak exposures to asbestos will occur. Peaks will occur during disturbances of the friable material, either accidentally or during repair or renovation operations, and during resuspension of previously released fibers by cleaning and maintenance operations, such as sweeping, dusting, vacuuming, etc., or by general activities in the vicinity of fibers that have settled on floors and other surfaces.

Since peak exposures to asbestos in schools entail risks of serious injuries which may be reduced at extremely low costs, EPA finds that these exposures present an unreasonable risk and should be reduced accordingly.

The 8,600 public schools which EPA estimates contain friable asbestos-containing material employ over 17,000 custodians and other maintenance personnel. These custodians sweep in areas containing friable asbestos. They clean and dust in these areas; they change lights in ceilings covered with friable asbestos-containing materials; they undertake minor repairs and renovations. Without knowing that these areas contain asbestos, these custodians

will continue to undertake normal maintenance activities with no protection against unnecessary exposures, and may consequently risk serious injuries as a result.

Moreover, all of these activities which cause peak exposures further contaminate the building and increase the prevailing concentrations. Sweeping, dusting, and cleaning suspend previously released fibers and disperse them throughout the building. Minor repairs and disturbances to the friable asbestos-containing materials release additional fibers. Both types of activities will increase prevalent concentrations which, in turn, will increase the risk to the larger population of children, teachers, and school administrators who occupy the buildings.

EPA finds that the requirements of this regulation will reduce these risks. School officials and maintenance personnel, once informed of the risks of asbestos and of interim measures to avoid the risks, will act in their own best interests and the interests of school children to reduce the peak exposures as much as possible. If friable asbestos-containing materials in schools are identified, custodians will be able to avoid them during renovation projects and minimize disruptions of them during routine maintenance. If the custodians are provided with information on the use of wetting agents and on proper work practices when conducting necessary repairs and renovations, they will be able to reduce fiber release during such operations and reduce risks to themselves and to others. Instructions on proper cleaning activities in contaminated areas, including wet mopping and wet dusting, will reduce risks caused by unnecessary resuspension of asbestos fibers that would otherwise occur.

Finally, once local school officials know of the presence of friable asbestos-containing materials in buildings, they can take steps to ensure that occupants of the building avoid areas which contain the materials or avoid activities which unnecessarily disturb the materials.

Thus, by identifying friable asbestos-containing materials in school buildings and by implementing specific interim control procedures for reducing exposures, local school officials will reduce the risks of injury resulting from such exposures to school children, custodians, and other building occupants.

In addition to reducing peak exposures, the requirements of the regulation will reduce the prevalent level of fiber concentrations in schools by reducing the frequency of

disturbances of the material and resuspension of released fibers. This present inspection regulation will enable school officials to complete the initial steps in a program which may lead to a determination at the local level that removal or abatement is needed and will, in the interim, reduce risks that would otherwise occur.

As reviewed above, the economic impacts of the rule are small. This regulation imposes costs upon all schools, but to varying degrees, as explained in the "Economic Effects" section above. In some instances, e.g. where there are friable materials which must be sampled because they are likely to contain asbestos, costs to individual schools may reach several hundred dollars. These costs are not unreasonable in view of the reduction in exposure to asbestos that will result from this rule. Furthermore, the identification of asbestos in schools, is a prerequisite to making the ultimate abatement determinations at the local level and will, therefore, contribute to the reduction in risk that will result from abatement.

C. Analysis Under Section 9 of TSCA

Section 9(a) of TSCA requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or sufficiently reduce unreasonable risks. EPA has reviewed other Federal authorities and finds that action under those authorities will not sufficiently reduce the risks addressed by this rule. Specifically, EPA has considered the regulatory authority of the Consumer Product Safety Commission (CPSC), the Occupational Safety and Health Administration (OSHA), and the Education Department (ED).

One comment stated the Agency had not adequately considered the authority of CPSC and ED (see Analysis of Comments, p. 5), a view with which the Agency disagrees. ED is not authorized to require detection of asbestos (the School Asbestos Hazard Detection and Control Act establishes a program to assist school districts financially). Further, as stated in the preamble to the proposal (45 FR 61973), EPA finds that it would be prohibitively difficult to identify companies which could be required to provide notice to schools under the authority of the Consumer Product Safety Act, sections 12 and 15. It is therefore necessary to regulate under TSCA (45 FR 61974).

IV. Discussion of the Rule

This section discusses modifications and clarifications of the rule as a result

of public comment on and further analysis of the provisions of the proposed rule. The Agency's detailed analysis of major comments and the response to each are presented in the support document titled "Analysis of Comments," published with this rule and also added to the rulemaking record.

A. Definitions

Section 763.103 of the proposal (now § 763.103) defined various terms used in the regulation (45 FR 61986). The Agency finds that the definitions in the proposed rule are clear and adequate. They appear in § 763.103 of this final rule.

The Agency has received several comments on the definition of "friable material" (see Analysis of Comments, pp. 28-29). After reviewing the comments, EPA has decided to leave that definition unchanged. The operative language of the definition of a friable material is that it "may be crumbled, pulverized, or reduced to powder by hand pressure" (45 FR 61974). EPA stresses that materials rendered nonfriable, as by some methods of encapsulation, are not included under this definition.

B. Inspecting Schools

Regarding § 763.3 of the proposed rule (now § 763.105), "Inspection for friable materials," one comment pointed out that not all schools own the structure they use and may not be able, practically or legally, to take the steps required by the rule. EPA is clarifying the identification requirements in this final rule (§ 763.105) to indicate that local education agencies which lease or use a structure for school purposes must take steps to ensure that the required procedures are carried out, regardless of ownership (see Analysis of Comments, p. 29).

EPA has also changed the description of the inspection process to make it clear that an inspector must touch suspect material to determine whether it is friable.

C. Sampling Friable Materials

Section 763.4 of the proposed rule (now § 763.107) laid out the Agency's sampling requirements (45 FR 61987). The proposed rule stated that three samples must be taken from each area of friable asbestos-containing material (45 FR 61975). Section 763.107 of the rule adopts that requirement. EPA has published "Asbestos-Containing Materials in School Buildings—Guidance for Asbestos Analytical Programs" to provide guidance on a

method for randomly selecting these samples.

Several comments questioned the ability of only three samples to yield reliable results, citing instances where the analytical results from three or more analyses differed greatly. EPA recognizes that there may be instances in which the analysis of three samples of friable materials might produce inconclusive results. As stated in the preamble to the proposal, the requirements for three samples is based on the Agency's finding that most materials can be characterized by three samples and that requiring additional samples for all materials would be an unnecessary expense. Less than three samples, however, cannot accurately characterize the material, and in cases where only one sample was taken, additional samples will be required (see H. Exemptions below). The Agency does not intend to publish any additional rules at this time to address potential problems with sampling but recommends that local officials consult with their Regional Enforcement Office as to the advisability of taking additional samples in specific instances (see Analysis of Comments, Definitions).

Comments on the proposal questioned whether inspectors could distinguish "sampling areas" from which to take the samples. EPA emphasizes that the definition is meant to provide guidance to inspectors who may find two or more distinct friable materials in a school. If two areas differ in appearance, the rule requires that three samples be taken from each. In this way, inspectors may be able to determine, for example, that one area contains asbestos and that another does not. If all the friable material in a building is homogeneous in appearance, then it should be treated as one sampling area.

EPA is also noting in the rule that the use of respirators is highly recommended when inspecting behind a false ceiling and when taking large numbers of samples of friable materials. One comment suggested respirators be required. EPA finds that sampling may lead to exposures up to 0.1 fibers per cubic centimeter (f/cc) and that the use of respirators during sampling may prevent such exposures. While it is always advisable to avoid unnecessary exposure to asbestos, EPA does not find the evidence sufficient to require the use of respirators (see Analysis of Comments, p. 34).

D. Analyzing Friable Materials

Section 763.5 of the proposal (now 763.109), "Analyzing friable materials," (45 FR 61987) required the use of specific analytical techniques for bulk materials.

EPA described the analytical protocol to be followed as "Polarized Light Microscopy (PLM), supplemented where necessary by X-ray Diffraction * * *". This requirement (§ 763.109 of the rule) has not changed. In the preamble to the proposal, the word "supplemented" was accidentally omitted from the discussion of the analytical method (45 FR 61976). The Agency re-emphasizes that PLM is the preferred method, and that X-ray Diffraction is not in itself adequate to identify asbestos.

E. Warnings and Notifications

Section 763.6 of the proposal (now § 763.111), "Warnings and notifications," (45 FR 61987) presented proposals to require posting of a notice of inspection, provision of certain information on asbestos to employees, and direct notification of inspection results to parent-teacher associations. The Agency received comments concerning the duration of the posted warnings for school employees. EPA is dropping the requirement for the posting of notices in schools where there is no friable asbestos-containing material. Because some schools may not have parent-teacher associations, as pointed out by comments, the Agency is adding direct notification of parents as an alternative to notifying such associations (see Analysis of Comments, pp. 38-39).

Several comments said that the notice to parents would incite over-reaction, perhaps forcing the removal of materials in good condition. EPA recommends that the notification to parents, in addition to stating the results of inspections, include the statement: "It is important to note that not all friable asbestos-containing material need be removed from schools. Once such material has been identified, a program can be implemented to ensure that the material is maintained in good condition and that appropriate precautions are followed when the material is disturbed for any reason."

Finally, the content of the "Guide for Reducing Asbestos Exposure" has been changed slightly. Now included are recommendations that water to which a wetting agent has been added be used when asbestos-containing material is to be worked on and that debris from such work be disposed of in plastic bags (see Analysis of Comments, pp. 40-41).

F. Recordkeeping

Sections 763.7 and 763.8 of the proposal dealt with records to be kept by local education agencies (45 FR 61992). EPA is promulgating § 763.114, *Recordkeeping* (proposed § 763.7), without changes. However, the Agency has determined that the proposed

§ 763.8 *Optional Form*, should be eliminated from the regulation. Despite one comment to the effect that the Optional Form should be mandatory, the Agency finds that the material in the form is unnecessary for this rule.

EPA recommends that local education agencies institute a management system based on these records. The management system should be used to control access to friable asbestos-containing materials, such as when repair work is to be done. Local education agencies can then ensure, before maintenance or renovation is done, that workers are properly protected and that any debris from the work is cleaned up. Local education agencies should also periodically inspect friable asbestos-containing material to determine whether, due to deterioration or damage, the material requires corrective action.

G. Compliance

In § 763.9 of the proposal (now § 763.115), EPA stated the compliance date for the rule and proposed possible penalties for violations (45 FR 61997). Comments on the compliance section of the proposal indicated that some persons were not aware of exemptions to the rule. To clarify the compliance provision under § 763.115, EPA is reminding local education agencies that they may be eligible for exemptions if they have conducted certain detection activities. Local education agencies are advised to refer to the exemption section.

H. Exemptions

Section 763.10 of the proposal (now § 763.117) provided exemptions to local education agencies which had undertaken certain activities (45 FR 61997). EPA has changed the exemptions section. The proposal exempted from §§ 763.3, 763.4, and 763.5 (now §§ 763.105, 763.107, and 763.109) schools in which past activities in compliance with the inspection, sampling and analysis provisions of the rule had been conducted (45 FR 61977). This exemption is adopted in § 763.117. EPA is now also exempting schools built after December 31, 1978 from all provisions of the rule because the application of friable asbestos-containing material was banned by EPA by that date. Little purpose would be served by inspecting these schools and keeping records of (presumably) negative findings.

However, EPA has decided that the exemption of past actions in compliance with the recommendations for inspections and sampling under the TAP is too broad in one respect: where a

finding of "no asbestos" is based on analysis of less than three samples of the friable material, EPA will require that the material be resampled in accordance with the rule. Less than three samples may have been analyzed in some schools because there were less than 15,000 square feet of friable materials which, according to TAP guidance to take one sample per 5,000 square feet, would have required only one or two samples.

This revision is made because, when the true asbestos content of a material is low, the analysis of only one or two samples may not detect asbestos. Some low content materials may have been incorrectly classified as nonasbestos merely because the one or two samples analyzed were taken from spots in which poor mixing of the original material resulted in very little asbestos being present. EPA finds that a total of three samples are necessary to provide a high degree of certainty that any asbestos present throughout the sampling area is detected. This revision should not affect the majority of schools which have already taken samples because many have more than 15,000 square feet of materials (and therefore took at least three samples) and many others have taken more samples than recommended under the TAP.

In addition, EPA has decided to specifically exempt from the inspection, sampling, analysis, notification and recordkeeping requirements schools which can meet one of two criteria. These criteria are: (1) Schools which, prior to the effective date of this rule, have inspected, sampled and analyzed according to the procedures in this rule, and found no friable asbestos-containing materials. The school record must contain a copy of all laboratory reports, and all correspondence with laboratories, (letters discussing analyses, results, etc); (2) Schools that can document that, at the time of construction, modification, or renovation, no friable asbestos-containing building materials were used. To qualify for these exemptions, a school must keep the supporting records and a certification statement signed by the person responsible for compliance. The certification, found in § 763.117 of this rule, must state that, to the best of the official's knowledge, the school does not contain friable asbestos-containing materials.

The Agency is concerned that education agencies fully understand the exemption for schools which can document that no friable asbestos-containing building materials were used at the time of construction, modification,

or renovation. The utility of building records often is extremely limited because the records are incomplete, if available at all. Records may indicate that a fireproofing spray was used without indicating its content, or they may incorrectly state that a material has asbestos when some other fiber was substituted during application. The records used as documentation for this exemption must clearly indicate that no friable asbestos-containing materials were used. For example, EPA's experience from the Technical Assistance Program was that architectural plans are insufficient documentation in themselves if they only state that asbestos-containing materials should not be used. Therefore, unless the records clearly show that the friable materials themselves used during construction, modification, or renovation did not include asbestos, a school should not consider the records sufficient justification to qualify for the exemption.

Schools in which school officials decided to treat friable materials as though they contain asbestos are also exempt from the inspection sampling and analysis requirements of this rule. EPA requires that, where a positive finding of asbestos is based either on records or on only one or two samples, local education agencies should take up to three samples. This will provide greater certainty and perhaps eliminate unnecessary treatment of nonasbestos materials.

One comment on the proposed rule pointed out wide variation in analytical results from three laboratories analyzing split samples of several friable materials. Analyses were apparently done prior to EPA's preparation of an interim analytical protocol for PLM (in mid-1980), and there is some question about the ability of the three laboratories to properly detect asbestos. EPA will not require that all analyses done before the protocol was prepared be repeated. However, EPA strongly recommends that school districts review their information on all earlier analyses' results to determine whether proper techniques were used.

The Agency has also determined that, in a school where previously discovered friable asbestos-containing material has been removed or satisfactorily encapsulated so that it is no longer friable, the provisions of this rule should not apply. By undertaking these corrective actions, school officials not only will have substantially complied with the identification requirements, they will also have removed the types of materials which are the focus of the

recordkeeping and notification parts of this rule.

V. Export Reporting

Section 12(b)(2) of TSCA requires any person who exports or intends to export a chemical substance for which a rule exists under TSCA section 6 to notify the Administrator of such export or intent to export. This requirement applies to export of bulk asbestos and asbestos in mixtures which must be processed or fabricated before further distribution in commerce.

Regulations regarding this requirement were published in the *Federal Register* of December 16, 1980 (45 FR 82844). EPA issued a clarification on these requirements in the *Federal Register* of July 21, 1981 (46 FR 37609).

Notices shall be sent to: Document Control Officer, TS-793, Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

VI. Rulemaking Record

EPA has established a Public Record for this rulemaking (docket number OPTS 61004) which along with a complete index is available for inspection in the OPTS reading room from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, at 401 M Street SW., Washington, D.C. The record was listed in the preamble to the proposed rule (45 FR 61980), and is hereby incorporated. Documents and letters have been added to appropriate sections of the record as listed below under each section's title:

E. Comments on the Proposal

The Agency received 45 main comments and 11 reply comments on the proposed rule.

G. Support Documents

1. USEPA, OPTS, OTS. Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings—Health Effects and Magnitude of Exposure. Draft. August 3, 1981.

2. USEPA, OPTS, OTS. Support Document—Asbestos-Containing Materials in Schools—Health Effects and Magnitude of Exposure. Final Rule. January, 1982.

3. USEPA, OPTS, OTS. Support Document—Economic Impact Analysis of the Final Identification and Notification Rule on Asbestos-Containing Materials in Schools. January, 1982.

4. USEPA, OPTS, OTS. Analysis of Comments on Proposed Rule for Identification and Notification of

Asbestos-Containing Materials in Schools. January, 1982.

J. Other Federal Register Notices

1. 45 FR 61950. Department of Education. Asbestos Detection and Control: Local Educational Agencies; Asbestos Detection and State Plan: State Educational Agencies (September 17, 1980).

2. 46 FR 4536. Department of Education. Asbestos Detection and Control: Local Educational Agencies; Asbestos Detection and State Plan: State Educational Agencies; Final Regulations. (January 16, 1981).

K. USEPA News Releases

1. USEPA. "EPA Adopts Interim Cancer Assessment Procedures." (May 19, 1976).

L. Reports

1. Albert RE, Train RE, Anderson E. "Rationale Developed by the Environmental Protection Agency for the Assessment of Carcinogenic Risks." *JNCI* 58 (1977): 1537-1541.

2. Atkins Research and Development. *Asbestos: Review Of Uses, Health Effects, Measurement and Control*. Epsom Surrey, England. (January 1977.)

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14. Hirsch A, Bignon J, Sebastien P, Gaudichet A. "Asbestos Fibers in Laryngeal Tissues: Findings in Two Patients with Asbestosis Associated with Laryngeal Tumors." *Chest* 76 (1979): 697-699.

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36. USEPA, OTS, OTE. *Risk Assessment of Asbestos in Schools*. May 21, 1980. Life Systems, Inc.

37. USEPA, OPTS, OTS, EED. *Asbestos-Containing Materials in School Buildings: Bulk Sample Analysis*

Quality Assurance Program. Round Two. EPA 560/5-81-001. (March 1981.)

38. USEPA, OPTS, OTS, EED.

Characteristics of the Asbestos Exposure Assessment Algorithm. Draft as prepared by RTI [November 1980].

39. USEPA, SAB. Review of "Technical Support Document for Regulatory Action Against Friable Asbestos-Containing Materials in School Buildings" (Draft dated September 1980). A report of the Toxic Substance Subcommittee EPA/SAB/81/001. (February, 1981) Washington, D.C.

40. Weill H, Hughes J, Waggenpack C. "Influence of Dose and Fiber Type on Respiratory Malignancy Risk in Asbestos Cement Manufacturing." *Am Rev Respir Dis*. 120 (1979): 345-354.

41. WHO, IARC. "An Evaluation of Chemicals and Industrial Processes Associated with Cancer in Humans Based on Human and Animal Data: IARC Monographs 1 to 20." *Cancer Research*. 40 (1980): 1-12.

N. Written Communications

1. State of Hawaii, Department of Health. Letter from MK Kolzum, D.D. for Env. Health, to John Ritch, Jr. Director, IAO, OTS USEPA. Subject: Response to J. Ritch's notice of May 15, 1981 re: Conference on Encapsulation of Asbestos-Containing Material. (05/22/81). With Enclosure—State of Hawaii, DOH, et al., *Report on House Resolution #358. Requesting a Report on the Status of Efforts to Remedy the Problem of Asbestos-Containing Materials in the Public Schools and Related Health Risks*. 10th Legislature, State of Hawaii. 1980.

2. Letter from T.S. Hardy, Kirkland and Ellis, Counsel for AIA. To E.A. Klein, Esq. Subject: Friable Asbestos-Containing Materials in Schools; Proposed ID, (specifically Quantitative Risk Assessment). (08-18-81).

Any person wishing to notify EPA of any errors or omissions in the rulemaking record must do so before the effective date of this rule.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because: the overall economic impact of the rule is under \$6 million; it imposes only a small increase in costs on the schools affected by the rule; and it has no adverse impact on competition, employment, investment, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3510 *et seq* (the "Act"), authorized the Director of the OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this rule constitute a "collection of information" as defined in 44 U.S.C. 3502(4). In accordance with the Act, the recordkeeping and reporting of this rule has been reviewed by OMB and the Federal Education Data Acquisition Council. The OMB control number is (2000-0463).

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Asbestos.

Dated: May 21, 1982.

Anne M. Gorsuch,
Administrator.

Therefore, Chapter I of Title 40 of the Code of Federal Regulations is amended by adding a new Part 763 consisting at this time of Subpart F to read as follows:

PART 763—ASBESTOS

Subparts—A—E [Reserved]

Subpart F—Friable Asbestos-Containing Materials in Schools

Sec.	
763.100	Scope and purpose.
763.103	Definitions.
763.105	Inspection for friable material.
763.107	Sampling friable material.
763.109	Analyzing friable material.
763.111	Warnings and notifications.
763.114	Recordkeeping.
763.115	Compliance.
763.117	Exemptions.
763.119	References.

Appendix A—Interim Methods for the Determination of Asbestos In Bulk Insulation Samples.

Authority: Sec. 6 of the Toxic Substances Control Act, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605).

Subparts—A—E [Reserved]

Subpart F—Friable Asbestos-Containing Materials in Schools

§ 763.100 Scope and purpose.

(a) This rule requires local education agencies to identify friable asbestos-containing material in public and private schools by visually inspecting school buildings for friable materials, sampling such materials, and having samples analyzed by appropriate techniques

referred to in the rule. In addition, the rule requires local education agencies to post a notice of the results of inspections and analyses. The rule requires local education agencies to provide warnings on the health effects of asbestos and instructions on methods to avoid or reduce exposure to school employees of any school with friable asbestos-containing material and to notify parent-teachers associations of the results of inspections. The rule also includes recordkeeping requirements. Local education agencies may contractually delegate their duties under this rule, but they remain responsible for the proper performance of those duties. Local education agencies are encouraged to consult with EPA Regional Asbestos Coordinators for assistance in complying with this rule.

(b) The addresses and telephone numbers of the EPA Regional Asbestos Coordinators are:

(1) EPA Region I

Asbestos Coordinator
Air and Hazardous Materials Division
JFK Federal Bldg.
Boston, MA 02203
(617) 223-0585

(2) EPA Region II

Asbestos Coordinator
Room 1013, Woodbridge Avenue
Edison, NJ 08837
(201) 321-6668

(3) EPA Region III

Asbestos Coordinator
Curtis Building
Sixth and Walnut Streets
Philadelphia, PA 19106
(215) 597-9859, 597-8683

(4) EPA Region IV

Asbestos Coordinator
345 Courtland Street
Atlanta, GA 30365
(404) 881-3864

(5) EPA Region V

Asbestos Coordinator
230 S. Dearborn St.
Chicago, IL 60604
(312) 886-6003

(6) EPA Region VI

Asbestos Coordinator
First Internat'l Bldg.
1201 Elm Street
Dallas, TX 75270
(214) 767-2734

(7) EPA Region VII

Asbestos Coordinator
324 East 11 Street
Room 1500

Kansas City, MO 64106
(816) 374-6538

(8) EPA Region VIII

Asbestos Coordinator
1880 Lincoln Street
Denver, CO 80295
(303) 837-3926

(9) EPA Region IX

Asbestos Coordinator
215 Fremont Street
San Francisco, CA 94105
(415) 974-8123

(10) EPA Region X

Asbestos Coordinator
1200 Sixth Avenue
Seattle, WA 98101
(206) 442-2888

§ 763.103 Definitions.

For the purposes of this part:

(a) "Act" means the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601, et seq.

(b) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite.

(c) "Asbestos-containing material" means any material which contains more than 1 percent asbestos by weight.

(d) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(e) "Local education agency" means:

(1) Any local education agency as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854).

(2) The governing authority of any nonprofit elementary or secondary school, where the term "nonprofit" means owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) "Sampling area" means any area, whether contiguous or not, within a school building which contains friable material that is homogeneous in texture and appearance.

(g) "School" means any public or

private day or residential school that provides elementary or secondary education for grade 12 or under as determined under State law, or any school of any Agency of the United States.

(h) "School buildings" means:

(1) Structures used for the instruction of school children, including classrooms, laboratories, libraries, research facilities and administrative facilities.

(2) School eating facilities, and school kitchens.

(3) Gymnasiums or other facilities used for athletic or recreational activities, or for courses in physical education.

(4) Dormitories or other living areas of residential schools.

(5) Maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs 1 through 4 of this paragraph.

(i) "Use of asbestos" means the presence of asbestos-containing material in school buildings.

§ 763.105 Inspection for friable material.

(a) Local education agencies shall inspect each school building which they lease, own, or otherwise use as a school building, to locate all friable material.

(b) This inspection shall consist of looking for and touching all suspect materials, including surfaces behind suspended ceilings or other non-permanent structures which may be entered during normal building maintenance or repairs. For further information on inspection procedures, officials should consult Chapter 4 of "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1 (EPA no. C00090). Particular attention should be paid to the recommendation regarding respirators. Copies of the document can be obtained by calling 800-424-9065 (in Washington, D.C. call 554-1404).

§ 763.107 Sampling friable material.

(a) If friable materials are found in a school building, local education agencies shall identify each distinct sampling area of friable materials within the school building, take at least three samples from locations distributed throughout the sampling area, and label each sample container with a sample identification number unique to the sampling location and building.

(b) Officials should consult "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, Chapter 5, for further information on sampling procedures. The requirement that three samples be taken in each sampling area supersedes the recommendation made in the Guidance Document to take one sample per 5000 square feet of friable material.

(c) Sampling locations should be randomly distributed within the sampling; the locations should not be selected simply for convenience or ease of reaching the sample, or because the sampler judges the location to be representative. Samples shall be taken using small sealable containers; samples shall penetrate the depth of the friable material to the substrate.

§ 763.109 Analyzing friable material.

Local education agencies shall have all samples of friable material analyzed for asbestos using Polarized Light Microscopy (PLM), supplemented where necessary by X-ray Diffraction, in accordance with "Interim Method for the Determination of Asbestiform Minerals in Bulk Insulation Samples," which is found under appendix A of this Subpart. Persons interested in analyzing bulk samples for asbestos can obtain copies of the document by calling 800-424-9065 (in Washington, D.C., call 554-1404). A list of laboratories capable of conducting analyses of friable materials can be obtained by calling 800-334-8571, extension 6741. Officials should consult "Asbestos-Containing Materials in School Buildings: A Guidance Document," Part 1, Chapter 6, for further information on analysis of friable materials.

§ 763.111 Warnings and notifications.

(a) Local education agencies shall post in the primary administrative and custodial offices and in the faculty common rooms of each school under their authority a completed copy of the following Notice to School Employees unless no friable asbestos-containing material is present in the school. The notice shall remain posted indefinitely in any school which has friable asbestos-containing material.

BILLING CODE 6560-50-M

NOTICE TO SCHOOL EMPLOYEES

In accordance with EPA regulations, this school has been inspected for friable (easily crumbled) materials which contain asbestos. Friable asbestos-containing material may cause health problems.

Friable asbestos-containing material is present in

(Name of School)

A record of the inspection, a diagram of the location(s) of friable asbestos-containing materials, and a copy of relevant EPA regulations are available in

Building	Room

For further information, interested persons should call 800-424-9065 (554-1404 in the Washington, DC area).

Signed:

(Name)

(Title)

Date

(b) Local education agencies shall provide to all persons employed in school buildings under their authority which contain friable asbestos-containing materials a written notice of the location, by room or building area, of all friable asbestos-containing materials in the school.

(c) The following information on interim procedures to reduce exposures, "A Guide for Reducing Asbestos Exposure," shall be provided to all custodial or maintenance employees:

BILLING CODE 6590-50-M

A GUIDE FOR REDUCING ASBESTOS EXPOSURE

PURPOSE

Your school building contains materials which contain asbestos and may release fibers into the air. Breathing asbestos

fibers is dangerous. This fact sheet tells how to reduce exposure to asbestos fibers. Please read it carefully.

PROTECTING YOURSELF FROM ASBESTOS

Some of the friable building materials in your school contain asbestos. Friable asbestos-containing materials crumble easily and release fibers into the air. Breathing these fibers may cause cancer and other diseases. The more asbestos you breathe, the greater your chances are of getting disease. You can take precautions that will reduce or eliminate the risk of being exposed to asbestos.

Find out from your supervisor where these friable asbestos-containing materials are in your building. Do not touch or disturb them unless you have to. If you must handle an asbestos-containing material, first lightly spray it with water. (EPA recommends using water which contains wetting agents, if they are available.) Wet asbestos-containing materials will not release as many fibers.

Even if friable asbestos-containing materials are not disturbed, they may release asbestos fibers, which will fall slowly to the floor. If you are cleaning in areas which contain these materials, do not use a broom: it will stir the fibers into the air. Do not use a vacuum cleaner unless it is equipped with a High Efficiency Particulate Absolute filter. The fibers are so small

they can pass through an ordinary vacuum cleaner and out into the room.

When cleaning in areas which contain friable asbestos-containing materials, use dampened mops and dustcloths. Dampened mops and dustcloths will hold the fibers much better than dry mops and dustcloths, and will reduce the number of fibers put back into the air. It is best to use mops with disposable heads and to throw away the mop head after use. Otherwise fibers will be released as the mop dries. Use either lightly dampened mops or cloths or a vacuum with a High Efficiency Particulate Absolute filter to clean areas where wet mopping cannot be used (such as carpeting or hardwood floors).

Clean tables and chairs in the area with damp cloths. Do not dust them with brushes or with dry cloths, and do not vacuum them.

After you use the mop heads and cloths, put them in a plastic bag while they are still wet. Dislodged materials should also be placed in plastic bags for disposal.

A LIST OF IMPORTANT POINTS TO REMEMBER

1. Do not handle or disturb friable asbestos containing materials unless necessary.
2. If you must handle asbestos-containing materials, wet them first.
3. If you must disturb asbestos (for example, to repair a light), see your supervisor before starting work. Then:
 - a. Place a plastic dropcloth below the work area.
 - b. Spray asbestos-containing material with water before you disturb it.
 - c. Make sure that only those persons who are necessary for the job are in the area.
 - d. Put all the asbestos you remove into a heavy plastic bag. Seal the bag and discard it.
 - e. After the job, clean all the ladders and tools you used with a wet cloth.
 - f. Roll up the dropcloth carefully and put it in a plastic bag. Discard the bag.
 - g. Clean the floor below the work area with a wet mop.
 - h. Put the mop head and the cloth used to clean the ladders in a plastic bag while they are still wet, seal the bag, and discard it.
4. If you must disturb or remove large sections of asbestos-containing material, see your supervisor before you begin. The National Institute for Occupational Safety and Health recommends that a respirator approved for toxic dusts be worn during such work.

You should make arrangements to turn off the school's ventilation system if you are disturbing or removing large sections of asbestos-containing material. The ventilation system should remain off until the work is completed and the area has been cleaned.

(d) Local education agencies shall provide notice of the results of inspections and analyses in each school in which friable asbestos materials are found to the appropriate parent-teacher association of that school. If there is no parent-teacher association for the school, the local education agency shall notify directly the parents of its pupils.

§ 763.114 Recordkeeping.

(a) Local education agencies shall compile and maintain in the administrative office of each school under their authority a record which shall include:

(1) The name and address of the school.

(2) A list of all school buildings associated with the school, indicating whether each building has been inspected for friable materials in compliance with § 763.105, and which buildings contain friable materials.

(3) Copies of the Notice to School Employees, found in § 763.111(a).

(4) For each school building which contains friable materials:

(i) A blueprint, diagram, or written description of the building which identifies clearly the location(s) and

approximate area(s) in square feet of each sampling area of such material(s), the locations at which samples were taken, and the identification number of each sample, and which shows or describes clearly whether each sampling area of friable material contains asbestos, including an estimate of its percent asbestos content as determined by calculating the average of the percent asbestos contents of all samples taken in that area.

(ii) A copy of all laboratory reports and all correspondence with laboratories concerning the analysis of samples taken in accordance with § 763.107.

(5) If the school contains friable asbestos-containing materials, copies of the "Guide for Reducing Asbestos Exposure" contained in § 763.111(b), and one copy of "Asbestos-Containing Materials in School Buildings: A Guidance Document," Parts 1 and 2 (EPA No. C00090), which can be obtained by calling 800-424-9065.

(6) A statement that the requirements of the rule have been satisfied signed by the person responsible for compliance with the rule and including the date and the person's name and title.

(b) Each local education agency shall retain in the administrative office of the agency:

(1) A list of all schools under its authority, indicating whether schools were inspected in accordance with § 763.105, and which schools contain friable materials.

(2) A record of the friable materials in schools which were sampled and analyzed in accordance with §§ 763.107 and 763.109, indicating which materials contain asbestos.

(3) For each school which contains friable asbestos-containing materials, the total area of such materials in square feet, and the total number of school employees who regularly work in the school.

(c) *Form.* Each local education agency shall complete and retain in the administrative office of the local education agency the following form "Inspections for Friable Asbestos-Containing Materials."

BILLING CODE 6560-50-M

INSPECTIONS FOR FRIABLE ASBESTOS-CONTAINING MATERIALS

1. Please provide the following information about the local education agency:

NAME OF AGENCY

CITY

COUNTY

STATE

ZIP CODE

Please fill in the following information about the schools under the authority of this local education agency:

2. The number of schools which have been inspected for friable materials in accordance with § 763.105 of Title 40 of the Code of Federal Regulations.

3. The number of schools where friable materials are present.

If the answer to question 3 is none, disregard questions 4 - 7 and go on to the certification. Otherwise, fill in the following information about the schools enumerated in question 3:

4. The number of schools in which all friable materials have been sampled and analyzed in accordance with §§ 763.107 and 763.109 of Title 40 of the Code of Federal Regulations.

5. The number of schools with friable material(s) that contain(s) asbestos.

If the answer to question 5 is none, disregard questions 6 - 7 and go on to the certification. Otherwise, fill in the following information about the schools enumerated in question 5.

6. The total area in square feet of all friable asbestos-containing materials found in these schools.

7. The total number of school employees who regularly work in schools where friable asbestos-containing materials are present.

CERTIFICATION: Please read and sign below the following statement:

I hereby certify that this local education agency has complied with the EPA regulation 40 CFR 763.100 through 763.117, "Asbestos-Containing Materials in Schools Identification and Notification," and that the information on this form is, to the best of my knowledge, true and complete.

SIGNATURE

TYPED OR PRINTED NAME

TYPED OR PRINTED TITLE

DATE

Additional forms can be obtained by calling 800-424-9065 (554-1404 in the Washington, DC area).

EPA Form 7730-1 (6-82)

BILLING CODE 6560-50-C

§ 763.115 Compliance.

(a) Local education agencies shall comply with all parts of this regulation by May 27, 1983. Local education agencies that have already conducted detection activities should consult § 763.117 Exemptions.

(b) Actions undertaken by municipal or State officials on behalf of local education agencies as a part of a municipal or State school asbestos program shall constitute compliance with this regulation to the extent that such actions conform to the requirements of this regulation.

(c) Section 15(1) of TSCA (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to comply with any rule promulgated or order issued under section 6 of TSCA (15 U.S.C. 2605). Thus, failure to comply with any aspect of this rule constitutes a violation as defined by section 15(1) of TSCA.

(d) Section 16(a) of TSCA (15 U.S.C. 2615) provides that any person who violates any provision of section 15 shall be liable to the United States for civil penalties. If a violation is knowing or willful, criminal penalties may also be assessed. Under section 17 of TSCA (15 U.S.C. 2616), the Agency may take injunctive action to restrain persons from violating a rule promulgated under section 6 of TSCA.

§ 763.117 Exemptions.

(a) *Schools that were inspected, sampled, and analyzed prior to this rule.* (1) Schools are exempt from §§ 763.105, 763.107, and 763.109, if, prior to the effective date of this rule, local education agencies, or municipal or State agencies, acting on their behalf, have:

(i) Visually inspected all areas of the school for friable materials.

(ii) Sampled each type of friable material found in the school, as distinguished by different appearance or texture.

(iii) Had the sample(s) analyzed using Polarized Light Microscopy supplemented by X-ray Diffraction where necessary, or by Electron Microscopy.

This exemption for previous sampling activity does not apply to school buildings where it was determined that a friable material does not contain

asbestos based on fewer than three samples of the material.

(2) If a school was found to contain friable asbestos-containing materials, then §§ 763.111, 763.114 and 763.115, the recordkeeping and notification requirements, shall apply to the local education agencies.

(3) If a school was found to contain *no* friable asbestos-containing materials, the school also is exempt from §§ 763.111, 763.114, and 763.115, the recordkeeping and notification requirements, provided the school retains a copy of all laboratory reports and all correspondence with laboratories concerning the analyses of samples taken and maintains in the school record the following certifying statement, signed and dated by the person responsible for compliance with the rule: "I hereby certify that this school, to the best of my knowledge, does not contain friable asbestos-containing materials."

(b) *Schools which can document that no friable asbestos-containing building materials were used in construction, modification, or renovation.* A school is exempt from §§ 763.105, 763.107, and 763.109, the inspection, sampling, and analysis requirements, and §§ 763.111, 763.114, and 763.115, the recordkeeping and notification requirements, if:

(1) the school record contains documentation showing that, at the time of construction, modification, or renovation, no friable asbestos-containing building materials were used. To qualify for this exemption, documentation must clearly show that the friable materials used did not contain asbestos.

(2) the school record contains the following certifying statement, signed and dated by the person responsible for compliance with the rule: "I hereby certify that this school, to the best of my knowledge, does not contain friable asbestos-containing materials."

(c) *Other exemptions.* (1) Sections 763.105, 763.107, and 763.109 shall not apply to a school in which the record contains a signed statement certifying that any friable materials in the school shall be treated for purposes of this rule as asbestos-containing. In this case, the record shall also include information on the location of these materials.

(2) No provision of this subpart applies to any school if:

(i) The local education agency has conducted abatement programs that result in the elimination of all friable asbestos materials from the school either by removal or encapsulation of the materials.

(ii) No part of the school building was built before January 1979.

§ 763.119 References.

(a) *General.* The following reference contains detailed information on sampling and analysis of friable materials and provides a background on which this part is based. Copies may be obtained from the Document Control Officer, Management Support Division (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-106, 401 M Street SW, Washington, D.C. 20460.

(1) USEPA. 1979. "Asbestos-Containing Materials in School Buildings: A Guidance Document" Part 1. (EPA no. C00090).

(2) [Reserved]

(b) [Reserved]

Appendix A—Interim Method of the Determination of Asbestos in Bulk Insulation Samples**Section 1, Polarized Light Microscopy****1.1 Principle and Applicability**

Bulk samples of building materials taken for asbestos identification are first examined for homogeneity and preliminary fiber identification at low magnification. Positive identification of suspect fibers is made by analysis of subsamples with the polarized light microscope.

The principles of optical mineralogy are well established.^{1,2} A light microscope equipped with two polarizing filters is used to observe specific optical characteristics of a sample. The use of plane polarized light allows the determination of refractive indices along specific crystallographic axes. Morphology and color are also observed. A retardation plate is placed in the polarized light path for determination of the sign of elongation using orthoscopic illumination. Orientation of the two filters such that their vibration planes are perpendicular (crossed polars) allows observation of the birefringence and extinction characteristics of anisotropic particles.

Quantitative analysis involves the use of point counting. Point counting is a standard technique in petrography for determining the relative areas occupied by separate minerals in thin sections of rock. Background information on the use of point counting* and the interpretation of point count data* is available.

This method is applicable to all bulk samples of friable insulation materials submitted for identification and quantitation of asbestos components.

1.2 Range

The point counting method may be used for analysis of samples containing from 0 to 100 percent asbestos. The upper detection limit is 100 percent. The lower detection limit is less than 1 percent.

1.3 Interferences

Fibrous organic and inorganic constituents of bulk samples may interfere with the identification and quantitation of the asbestos mineral content. Spray-on binder materials may coat fibers and affect color or obscure optical characteristics to the extent of masking fiber identity. Fine particles of other materials may also adhere to fibers to an extent sufficient to cause confusion in identification. Procedures that may be used for the removal of interferences are presented in Section 1.7.2.2.

1.4 Precision and Accuracy

Adequate data for measuring the accuracy and precision of the method for samples with various matrices are not currently available. Data obtained for samples containing a single asbestos type in a simple matrix are available in the EPA report *Bulk Sample Analysis for Asbestos Content: Evaluation of the Tentative Method*.⁴

1.5 Apparatus

1.5.1 Sample Analysis

A low-power binocular microscope, preferably stereoscopic, is used to examine the bulk insulation sample as received.

- *Microscope*: binocular, 10-45X (approximate).
- *Light Source*: incandescent or fluorescent.
- *Forceps, Dissecting Needles, and Probes*
- *Glassine Paper or Clean Glass Plate*

Compound microscope requirements: A polarized light microscope complete with polarizer, analyzer, port for wave retardation plate, 360° graduated rotating stage, substage condenser, lamp, and lamp iris.

- *Polarized Light Microscope*: described above.
- *Objective Lenses*: 10X, 20X, and 40X or near equivalent.
- *Dispersion Staining Objective Lens*

(optional)*

- *Ocular Lens*: 10X minimum.
- *Eye-piece Reticle*: cross hair or 25 point Chalkley Point Array.
- *Compensator Plate*: 550 millimicron retardation.

1.5.2 Sample Preparation

Sample preparation apparatus requirements will depend upon the type of insulation sample under consideration. Various physical and/or chemical means may be employed for an adequate sample assessment.

- *Ventilated Hood* or negative pressure glove box.
- *Microscope Slides*
- *Coverslips*
- *Mortar and Pestle*: agate or porcelain. (optional)
- *Wylie Mill* (optional)
- *Beakers and Assorted Glassware* (optional)
- *Centrifuge* (optional)
- *Filtration apparatus* (optional)
- *Low temperature asher* (optional)

1.6 Reagents

1.6.1 Sample Preparation

- *Distilled Water* (optional)
- *Dilute CH₃COOH*: ACS reagent grade (optional)
- *Dilute HCl*: ACS reagent grade (optional)
- *Sodium metaphosphate (NaPO₃)₆* (optional)

1.6.2 Analytical Reagents

- *Refractive Index Liquids*: 1.490-1.570, 1.590-1.720 in increments of 0.002 or 0.004.
- *Refractive Index Liquids for Dispersion Staining*: high-dispersion series, 1.550, 1.605, 1.630 (optional).
- *UICC Asbestos Reference Sample Set*: Available from: UICC MRC Pneumoconiosis Unit, Llandough Hospital, Penarth, Glamorgan CF6 1XW, UK, and commercial distributors.
- *Tremolite-asbestos* (source to be determined)
- *Actinolite-asbestos* (source to be determined)

1.7 Procedures

Note.—Exposure to airborne asbestos fibers is a health hazard. Bulk samples submitted for analysis are usually friable and may release fibers during handling or matrix reduction steps. All sample and slide preparations should be carried out in a ventilated hood or glove box with continuous airflow (negative pressure). Handling of samples without these precautions may result in exposure of the analyst and contamination of samples by airborne fibers.

1.7.1 Sampling

Samples for analysis of asbestos content

shall be taken in the manner prescribed in Reference 5 and information on design of sampling and analysis programs may be found in Reference 6. If there are any questions about the representative nature of the sample, another sample should be requested before proceeding with the analysis.

1.7.2 Analysis

1.7.2.1 Gross Examination

Bulk samples of building materials taken for the identification and quantitation of asbestos are first examined for homogeneity at low magnification with the aid of a stereomicroscope. The core sample may be examined in its container or carefully removed from the container onto a glassine transfer paper or clean glass plate. If possible, note is made of the top and bottom orientation. When discrete strata are identified, each is treated as a separate material so that fibers are first identified and quantified in that layer only, and then the results for each layer are combined to yield an estimate of asbestos content for the whole sample.

1.7.2.2 Sample Preparation

Bulk materials submitted for asbestos analysis involve a wide variety of matrix materials. Representative subsamples may not be readily obtainable by simple means in heterogeneous materials, and various steps may be required to alleviate the difficulties encountered. In most cases, however, the best preparation is made by using forceps to sample at several places from the bulk material. Forcep samples are immersed in a refractive index liquid on a microscope slide, teased apart, covered with a cover glass, and observed with the polarized light microscope.

Alternatively, attempts may be made to homogenize the sample or eliminate interferences before further characterization. The selection of appropriate procedures is dependent upon the samples encountered and personal preference. The following are presented as possible sample preparation steps.

A mortar and pestle can sometimes be used in the size reduction of soft or loosely bound materials though this may cause matting of some samples. Such samples may be reduced in a Wylie mill. Apparatus should be clean and extreme care exercised to avoid cross-contamination of samples. Periodic checks of the particle sizes should be made during the grinding operation so as to preserve any fiber bundles present in an identifiable form. These procedures are not recommended for samples that contain amphibole minerals or vermiculite. Grinding of amphiboles may result in the separation of fiber bundles or the production of cleavage fragments with aspect ratios greater than 3:1.

Grinding of vermiculite may also produce fragments with aspect ratios greater than 3:1.

Acid treatment may occasionally be required to eliminate interferences. Calcium carbonate, gypsum, and bassanite (plaster) are frequently present in sprayed or trowelled insulations. These materials may be removed by treatment with warm dilute acetic acid. Warm dilute hydrochloric acid may also be used to remove the above materials. If acid treatment is required, wash the sample at least twice with distilled water, being careful not to lose the particulates during decanting steps. Centrifugation or filtration of the suspension will prevent significant fiber loss. The pore size of the filter should be 0.45 micron or less. Caution: prolonged acid contact with the sample may alter the optical characteristics of chrysotile fibers and should be avoided.

Coatings and binding materials adhering to fiber surfaces may also be removed by treatment with sodium metaphosphate.⁷ Add 10 mL of 10g/L sodium metaphosphate solution to a small (0.1 to 0.5 mL) sample of bulk material in a 15-mL glass centrifuge tube. For approximately 15 seconds each, stir the mixture on a vortex mixer, place in an ultrasonic bath and then shake by hand. Repeat the series. Collect the dispersed solids by centrifugation at 1000 rpm for 5 minutes. Wash the sample three times by suspending in 10 mL distilled water and recentrifuging.

After washing, resuspend the pellet in 5 mL distilled water, place a drop of the suspension on a microscope slide, and dry the slide at 110° C.

In samples with a large portion of cellulosic or other organic fibers, it may be useful to ash part of the sample and view the residue. Ashing should be performed in a low temperature asher. Ashing may also be performed in a muffle furnace at temperatures of 500° C or lower. Temperatures of 550° C or higher will cause dehydroxylation of the asbestos minerals, resulting in changes of the refractive index and other key parameters. If a muffle furnace is to be used, the furnace thermostat should be checked and calibrated to ensure that samples will not be heated at temperatures greater than 550° C.

Ashing and acid treatment of samples should not be used as standard procedures. In order to monitor possible changes in fiber characteristics, the material should be viewed microscopically before and after any sample preparation procedure. Use of these procedures on samples to be used for quantitation requires a correction for percent weight loss.

1.7.2.3 Fiber Identification

Positive identification of asbestos requires the determination of the following optical properties.

- Morphology

- Color and pleochroism
- Refractive indices
- Birefringence
- Extinction characteristics
- Sign of elongation

Table 1-1 lists the above properties for commercial asbestos fibers. Figure 1-1 presents a flow diagram of the examination procedure. Natural variations in the conditions under which deposits of asbestiform minerals are formed will occasionally produce exceptions to the published values and differences from the UICC standards. The sign of elongation is determined by use of the compensator plate and crossed polars. Refractive indices may be determined by the Becke line test. Alternatively, dispersion staining may be used. Inexperienced operators may find that the dispersion staining technique is more easily learned, and should consult Reference 9 for guidance. Central stop dispersion staining colors are presented in Table 1-2. Available high-dispersion (HD) liquids should be used.

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TABLE 1-1. OPTICAL PROPERTIES OF ASBESTOS FIBERS

Mineral	Morphology, color ^a	Refractive indices ^b α	γ	Birefringence	Extinction	Sign of elongation
Chrysotile (asbestiform serpentine)	Wavy fibers. Fiber bundles have splayed ends and "kinks". Aspect ratio typically >10:1. Colorless, nonpleochroic.	1.493-1.560	1.517-1.562 ^f (normally 1.556)	.008	to fiber length	+ (length slow)
Amosite (asbestiform grunerite)	Straight, rigid fibers. Aspect ratio typically >10:1. Colorless to brown, nonpleo- chroic or weakly so. Opaque inclusions may be present.	1.635-1.696	1.655-1.729 ^f (normally 1.696-1.710)	.020-.033	to fiber length	+ (length slow)
Crocidolite (asbestiform riebeckite)	Straight, rigid fibers. Thick fibers and bundles com- mon, blue to purple-blue in color. Pleochroic. Bire- fringence is generally masked by blue color.	1.654-1.701	1.668-1.717 ^e (normally close to 1.700)	.014-.016	to fiber length	- (length fast)
Anthophyllite- asbestos	Straight fibers and acicular cleavage fragments. Some composite fibers. Aspect ratio <10:1. Colorless to light brown.	1.596-1.652	1.615-1.676 ^f	.019-.024	to fiber length	+ (length slow)
Tremolite- actinolite- asbestos	Normally present as acicular or prismatic cleavage frag- ments. Single crystals pre- dominate, aspect ratio <10:1. Colorless to pale green.	1.599-1.668	1.622-1.688 ^f	.023-.020	Oblique extinction, 10-20° for fragments. Composite fibers show extinction.	+ (length slow)

^a From reference 5; colors cited are seen by observation with^b plane polarized light.^c From references 5 and 8.^d Fibers subjected to heating may be brownish.^e Fibers defined as having aspect ratio >3:1.^f || to fiber length.^f || to fiber length.

Polarized light microscopy analysis: For each type of material identified by examination of sample at low magnification. Mount spacially dispersed sample in 1.550 RI liquid. (If using dispersion staining, mount in 1.550 HD.) View at 100X with both plane polarized light and crossed polars. More than one fiber type may be present.

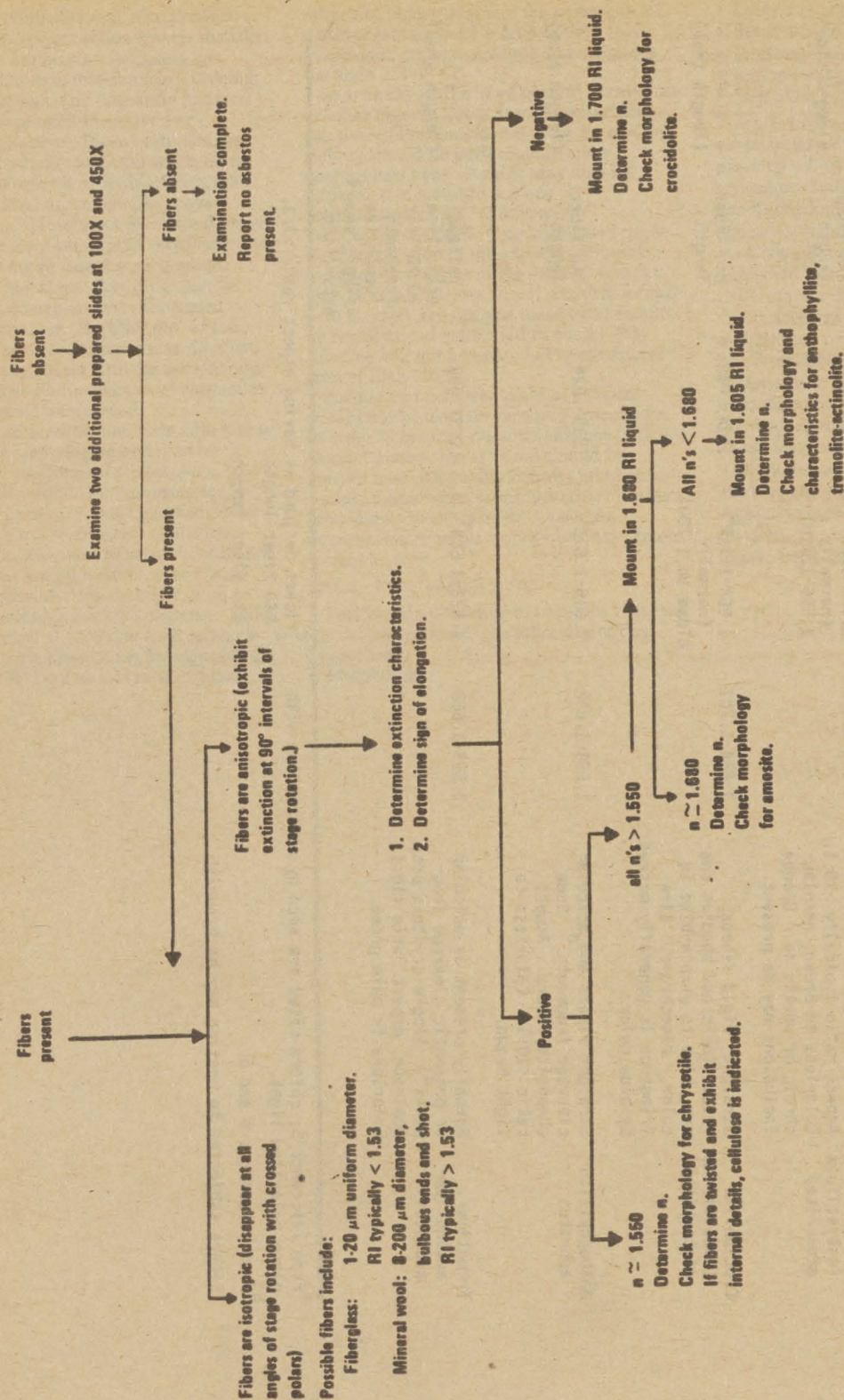


Figure 1-1. Flow chart for analysis of bulk samples by polarized light microscopy.

TABLE 1-2. CENTRAL STOP DISPERSION STAINING COLORS^a

Mineral	RI Liquid	$\eta \perp$	$\eta \parallel$
Chrysotile	1.550 ^{HD}	Blue	Blue-magenta
Amosite	1.680	Blue-magenta to pale blue	Golden-yellow
	1.550 ^{HD}	Yellow to white	Yellow to white
Crocidolite ^b	1.700	Red magenta	Blue-magenta
	1.550 ^{HD}	Yellow to white	Yellow to white
Anthophyllite	1.605 ^{HD}	Blue	Gold to gold-magenta
Tremolite	1.605 ^{HD^c}	Pale blue	Yellow
Actinolite	1.605 ^{HD}	Gold-magenta to blue	Gold
	1.630 ^{HD^c}	Magenta	Golden-yellow

^aFrom reference 9.^bBlue absorption color.^cOblique extinction view.

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1.7.2.4 Quantitation of Asbestos Content

Asbestos quantitation is performed by a point-counting procedure. An ocular reticle (cross-hair or point array) is used to visually superimpose a point or points on the microscope field of view. Record the number of points positioned directly above each kind of particle or fiber of interest. Score only points directly over asbestos fibers or nonasbestos matrix material. Do not score empty points for the closest particle. If an asbestos fiber and a matrix particle overlap so that a point is superimposed on their visual intersection, a point is scored for both categories. Point counting provides a determination of the area percent asbestos. Reliable conversion of area percent to percent of dry weight is not currently feasible unless the specific gravities and relative volumes of the materials are known.

For the purpose of this method, "asbestos fibers" are defined as having an aspect ratio greater than 3:1 and being positively identified as one of the minerals in Table 1-1.

A total of 400 points superimposed on either asbestos fibers or nonasbestos matrix material must be counted over at least eight different preparations of representative subsamples. Take eight forcep samples and mount each separately with the appropriate refractive index liquid. The preparation should not be heavily loaded. The sample should be uniformly dispersed to avoid overlapping particles and allow 25-50 percent empty area within the fields of view. Count 50 nonempty points on each preparation, using either

- A cross-hair reticle and mechanical stage; or
- A reticle with 25 points (Chalkley Point Array) and counting at least 2 randomly selected fields.

For samples with mixtures of isotropic and anisotropic materials present, viewing the sample with slightly uncrossed polars or the addition of the compensator plate to the polarized light path will allow simultaneous discrimination of both particle types. Quantitation should be performed at 100X or at the lowest magnification of the polarized light microscope that can effectively distinguish the sample components. Confirmation of the quantitation result by a second analyst on some percentage of analyzed samples should be used as standard quality control procedure.

The percent asbestos is calculated as follows:

$$\% \text{ asbestos} = (a/n) 100\%$$

where

a = number of asbestos counts,

n = number of nonempty points counted (400).

If a = 0, report "No asbestos detected." If $0 < a < 3$, report "<1% asbestos".

The value reported should be rounded to the nearest percent.

1.8 References

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Section 2, X-Ray Powder Diffraction

2.1 Principle and Applicability

The principle of X-ray powder diffraction (XRD) analysis is well established.^{1,2} Any solid, crystalline material will diffract an impinging beam of parallel, monochromatic X-rays whenever Bragg's Law,

$$\lambda = 2d \sin \theta,$$

is satisfied for a particular set of planes in the crystal lattice, where

λ = the X-ray wavelength, Å;

d = the interplanar spacing of the set of reflecting lattice planes, Å; and

θ = the angle of incidence between the X-ray beam and the reflecting lattice planes.

By appropriate orientation of a sample relative to the incident X-ray beam, a diffraction pattern can be generated that, in most cases, will be uniquely characteristic of both the chemical composition and structure of the crystalline phases present.

Unlike optical methods of analysis, however, XRD cannot determine crystal morphology. Therefore, in asbestos analysis, XRD does not distinguish between fibrous and nonfibrous forms of the serpentine and amphibole minerals (Table 2-1). However, when used in conjunction with optical methods such as polarized light microscopy (PLM), XRD techniques can provide a reliable analytical method for the identification and characterization of asbestiform minerals in bulk materials.

For qualitative analysis by XRD methods, samples are initially scanned over limited diagnostic peak regions for the serpentine (~7.4 Å) and amphibole (8.2-8.5 Å) minerals (Table 2-2). Standard slow-scanning methods for bulk sample analysis may be used for materials shown by PLM to contain significant amounts of asbestos (>5-10 percent). Detection of minor or trace amounts of asbestos may require special sample preparation and step-scanning analysis. All samples that exhibit diffraction peaks in the diagnostic regions for asbestiform minerals are submitted to a full (5°-60° 2 θ ; 1° 2 θ /min) qualitative XRD scan, and their diffraction patterns are compared with standard reference powder diffraction patterns³ to verify initial peak assignments and to identify possible matrix interferences when subsequent quantitative analysis will be performed.

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TABLE 2-1. THE ASBESTOS MINERALS AND THEIR NONASBESTIFORM ANALOGS

Asbestiform	Nonasbestiform
SERPENTINE	
Chrysotile	Antigorite, lizardite
AMPHIBOLE	
Anthophyllite asbestos	Anthophyllite
Cummingtonite-grunerite asbestos ("Amosite")	Cummingtonite-grunerite
Crocidolite	Riebeckite
Tremolite asbestos	Tremolite
Actinolite asbestos	Actinolite

TABLE 2-2. PRINCIPAL LATTICE SPACINGS OF ASBESTIFORM MINERALS^a

Minerals	Principal d-spacings (Å) and relative intensities			JCPDS Powder diffraction file ³ number
Chrysotile	7.37 ₁₀₀ 7.36 ₁₀₀ 7.10 ₁₀₀	3.65 ₇₀ 3.66 ₈₀ 2.33 ₈₀	4.57 ₅₀ 2.45 ₆₅ 3.55 ₇₀	21-543 ^b 25-645 22-1162 (theoretical)
"Amosite"	8.33 ₁₀₀ 8.22 ₁₀₀	3.06 ₇₀ 3.06 ₈₅	2.756 ₇₀ 3.25 ₇₀	17-745 (nonfibrous) 27-1170 (UICC)
Anthophyllite	3.05 ₁₀₀ 3.06 ₁₀₀	3.24 ₆₀ 8.33 ₇₀	8.26 ₅₅ 3.23 ₅₀	9-455 16-401 (synthetic)
Actinolite	2.72 ₁₀₀	2.54 ₁₀₀	3.40 ₈₀	25-157
Crocidolite	8.35 ₁₀₀	3.10 ₅₅	2.720 ₃₅	27-1415 (UICC)
Tremolite	8.38 ₁₀₀ 2.706 ₁₀₀ 3.13 ₁₀₀	3.12 ₁₀₀ 3.14 ₉₅ 2.706 ₆₀	2.705 ₉₀ 8.43 ₄₀ 8.44 ₄₀	13-437 ^b 20-1310 ^b (synthetic) 23-666 (synthetic mixture with richterite)

^aThis information is intended as a guide, only. Complete powder diffraction data, including mineral type and source, should be referred to, to ensure comparability of sample and reference materials where possible. Additional precision XRD data on amosite, crocidolite, tremolite, and chrysotile are available from the U.S. Bureau of Mines.⁴

^bFibrosity questionable.

Accurate quantitative analysis of asbestos in bulk samples by XRD is critically dependent on particle size distribution, crystallite size, preferred orientation and matrix absorption effects, and comparability of standard reference and sample materials. The most intense diffraction peak that has been shown to be free from interference by prior qualitative XRD analysis is selected for quantitation of each asbestiform mineral. A "thin-layer" method of analysis^{5,6} is recommended in which, subsequent to comminution of the bulk material to $\sim 10 \mu\text{m}$ by suitable cryogenic milling techniques, an accurately known amount of the sample is deposited on a silver membrane filter. The mass of asbestiform material is determined by measuring the integrated area of the selected diffraction peak using a step-scanning mode, correcting for matrix absorption effects, and comparing with suitable calibration standards. Alternative "thick-layer" or bulk methods,^{7,8} may be used for semiquantitative analysis.

This XRD method is applicable as a confirmatory method for identification and quantitation of asbestos in bulk material samples that have undergone prior analysis by PLM or other optical methods.

2.2 Range and Sensitivity

The range of the method has not been determined.

The sensitivity of the method has not been determined. It will be variable and dependent upon many factors, including matrix effects (absorption and interferences), diagnostic

reflections selected, and their relative intensities.

2.3 Limitations

2.3.1 Interferences

Since the fibrous and nonfibrous forms of the serpentine and amphibole minerals (Table 2-1) are indistinguishable by XRD techniques unless special sample preparation techniques and instrumentation are used,⁹ the presence of nonasbestiform serpentines and amphiboles in a sample will pose severe interference problems in the identification and quantitative analysis of their asbestiform analogs.

The use of XRD for identification and quantitation of asbestiform minerals in bulk samples may also be limited by the presence of other interfering materials in the sample. For naturally occurring materials the commonly associated asbestos-related mineral interferences can usually be anticipated. However, for fabricated materials the nature of the interferences may vary greatly (Table 2-3) and present more serious problems in identification and quantitation.¹⁰ Potential interferences are summarized in Table 2-4 and include the following:

- *Chlorite* has major peaks at 7.19 Å and 3.58 Å that interfere with both the primary (7.36 Å) and secondary (3.66 Å) peaks for chrysotile. Resolution of the primary peak to give good quantitative results may be possible when a step-scanning mode of operation is employed.

- *Halloysite* has a peak at 3.63 Å that interferes with the secondary (3.66 Å) peak for chrysotile.
- *Kaolinite* has a major peak at 7.15 Å that may interfere with the primary peak of chrysotile at 7.36 Å when present at concentrations of >10 percent. However, the secondary chrysotile peak at 3.66 Å may be used for quantitation.
- *Gypsum* has a major peak at 7.5 Å that overlaps the 7.36 Å peak of chrysotile when present as a major sample constituent. This may be removed by careful washing with distilled water, or by heating to 300° C to convert gypsum to plaster of paris.
- *Cellulose* has a broad peak that partially overlaps the secondary (3.66 Å) chrysotile peak.⁸
- Overlap of major diagnostic peaks of the amphibole asbestos minerals, amosite, anthophyllite, crocidolite, and tremolite, at approximately 8.3 Å and 3.1 Å causes mutual interference when these minerals occur in the presence of one another. In some instances, adequate resolution may be attained by using step-scanning methods and/or by decreasing the collimator slit width at the X-ray port.

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TABLE 2-4. INTERFERENCES IN XRD ANALYSIS OF ASBESTIFORM MINERALS

Asbestiform mineral	Primary diagnostic peaks (approximate d-spacings, in Å)	Interference
Serpentine		
Chrysotile	7.4	Nonasbestiform serpentines (antigorite, lizardite) Chlorite Kaolinite Gypsum
	3.7	Chlorite Halloysite Cellulose
Amphibole		
"Amosite" Anthophyllite Crocidolite Tremolite	3.1	Nonasbestiform amphiboles (cummingtonite-grunerite, anthophyllite, riebeckite, tremolite) Mutual interferences Carbonates Talc
	8.3	Mutual interferences

TABLE 2-3. COMMON CONSTITUENTS IN INSULATION AND WALL MATERIALS¹⁰

A. Insulation materials
Chrysotile
"Amosite"
Crocidolite
*Rock wool
*Slag wool
*Fiber glass
Gypsum ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$)
Vermiculite (micas)
*Perlite
Clays (kaolin)
*Wood pulp
*Paper fibers (talc, clay, carbonate fillers)
Calcium silicates (synthetic)
Opauques (chromite, magnetite inclusions in serpentine)
Hematite (inclusions in "amosite")
Magnetite
*Diatomaceous earth
B. Spray finishes or paints
Bassanite
Carbonate minerals (calcite, dolomite, vaterite)
Talc
Tremolite
Anthophyllite
Serpentine (including chrysotile)
Amosite
Crocidolite
*Mineral wool
*Rock wool
*Slag wool
*Fiber glass
Clays (kaolin)
Micas
Chlorite
Gypsum ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$)
Quartz
*Organic binders and thickeners
Hydromagnesite
Wollastonite
Opauques (chromite, magnetite inclusions in serpentine)
Hematite (inclusions in "amosite")

*Amorphous materials--contribute only to overall scattered radiation and increased background radiation.

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- Carbonates may also interfere with quantitative analysis of the amphibole asbestos minerals, amosite, anthophyllite, crocidolite, and tremolite. Calcium carbonate (CaCO_3) has a peak at 3.035 Å that overlaps major amphibole peaks at approximately 3.1 Å when present in concentrations of >5 percent. Removal of carbonates with a dilute acid wash is possible; however, if present, chrysotile may be partially dissolved by this treatment.¹¹

- A major talc peak at 3.12 Å interferes with the primary tremolite peak at this same position and with secondary peaks of crocidolite (3.10 Å), amosite (3.06 Å), and anthophyllite (3.05 Å). In the presence of talc, the major diagnostic peak at approximately 8.3 Å should be used for quantitation of these asbestiform minerals.

The problem of intraspecies and matrix interferences is further aggravated by the variability of the silicate mineral powder diffraction patterns themselves, which often makes definitive identification of the asbestos minerals by comparison with standard reference diffraction patterns difficult. This variability results from alterations in the crystal lattice associated with differences in isomorphous substitution and degree of crystallinity. This is especially true for the amphiboles. These minerals exhibit a wide variety of very similar chemical compositions, with the result being that their diffraction patterns are characterized by having major (110) reflections of the monoclinic amphiboles and (210) reflections of the orthorhombic anthophyllite separated by less than 0.2 Å.¹²

2.3.2 Matrix Effects

If a copper X-ray source is used, the presence of iron at high concentrations in a sample will result in significant X-ray fluorescence, leading to loss of peak intensity along with increased background intensity and an overall decrease in sensitivity. This situation may be corrected by choosing an X-ray source other than copper; however, this is often accompanied both by loss of intensity and by decreased resolution of closely spaced reflections. Alternatively, use of a diffracted beam monochromator will reduce background fluorescent radiation, enabling weaker diffraction peaks to be detected.

X-ray absorption by the sample matrix will result in overall attenuation of the diffracted beam and may seriously interfere with quantitative analysis. Absorption effects may be minimized by using sufficiently "thin" samples for analysis.^{5, 13, 14} However, unless absorption effects are known to be the same for both samples and standards, appropriate corrections should be made by referencing diagnostic peak areas to an internal standard^{7, 8} or filter substrate (Ag) peak.^{5, 6}

2.3.3 Particle Size Dependence

Because the intensity of diffracted X-radiation is particle-size dependent, it is essential for accurate quantitative analysis that both sample and standard reference materials have similar particle size distributions. The optimum particle size range for quantitative analysis of asbestos by XRD has been reported to be 1 to 10 µm.¹⁵ Comparability of sample and standard

reference material particle size distributions should be verified by optical microscopy (or another suitable method) prior to analysis.

2.3.4 Preferred Orientation Effects

Preferred orientation of asbestiform minerals during sample preparation often poses a serious problem in quantitative analysis by XRD. A number of techniques have been developed for reducing preferred orientation effects in "thick layer" samples.^{7, 8, 15} However, for "thin" samples on membrane filters, the preferred orientation effects seem to be both reproducible and favorable to enhancement of the principal diagnostic reflections of asbestos minerals, actually increasing the overall sensitivity of the method.^{12, 14} (Further investigation into preferred orientation effects in both thin layer and bulk samples is required.)

2.3.5 Lack of Suitably Characterized Standard Materials

The problem of obtaining and characterizing suitable reference materials for asbestos analysis is clearly recognized. NIOSH has recently directed a major research effort toward the preparation and characterization of analytical reference materials, including asbestos standards;^{16, 17} however, these are not available in large quantities for routine analysis.

In addition, the problem of ensuring the comparability of standard reference and sample materials, particularly regarding crystallite size, particle size distribution, and degree of crystallinity, has yet to be adequately addressed. For example, Langer et al.¹⁸ have observed that in insulating matrices, chrysotile tends to break open into bundles more frequently than amphiboles. This results in a line-broadening effect with a resultant decrease in sensitivity. Unless this effect is the same for both standard and sample materials, the amount of chrysotile in the sample will be underestimated by XRD analysis. To minimize this problem, it is recommended that standardized matrix reduction procedures be used for both sample and standard materials.

2.4 Precision and Accuracy

Precision of the method has not been determined.

Accuracy of the method has not been determined.

2.5 Apparatus

2.5.1 Sample Preparation

Sample preparation apparatus requirements will depend upon the sample type under consideration and the kind of XRD analysis to be performed.

- Mortar and Pestle: Agate or porcelain.
- Razor Blades
- Sample Mill: SPEX, Inc., freezer mill or equivalent.
- Bulk Sample Holders
- Silver Membrane Filters: 25-mm diameter, 0.45-µm pore size. Selas Corp. of America, Flotronics Div., 1957 Pioneer Road, Huntington Valley, PA 19006.
- Microscope Slides
- Vacuum Filtration Apparatus: Gelman No. 1107 or equivalent, and side-arm vacuum flask.
- Microbalance

- Ultrasonic Bath or Probe: Model W140, Ultrasonics, Inc., operated at a power density of approximately 0.1 W/mL, or equivalent.
- Volumetric Flasks: 1-L volume.
- Assorted Pipettes
- Pipette Bulb
- Nonserrated Forceps
- Polyethylene Wash Bottle
- Pyrex Beakers: 50-mL volume.
- Desiccator
- Filter Storage Cassettes
- Magnetic Stirring Plate and Bars
- Porcelain Crucibles
- Muffle Furnace or Low Temperature Asher

2.5.2 Sample Analysis

Sample analysis requirements include an X-ray diffraction unit, equipped with:

- Constant Potential Generator; Voltage and mA Stabilizers
- Automated Diffractometer with Step-Scanning Mode
- Copper Target X-Ray Tube: High intensity, fine focus, preferably.
- X-Ray Pulse Height Selector
- X-Ray Detector (with high voltage power supply): Scintillation or proportional counter.
- Focusing Graphite Crystal Monochromator; or Nickel Filter (if copper source is used, and iron fluorescence is not a serious problem).
- Data Output Accessories:
 - Strip Chart Recorder
 - Decade Scaler/Timer
 - Digital Printer
- Sample Spinner (optional).
- Instrument Calibration Reference Specimen: α-quartz reference crystal (Arkansas quartz standard, #180-147-00, Philips Electronics Instruments, Inc., 85 McKee Drive, Mahwah, NJ 07430) or equivalent.

2.6 Reagents

2.6.1 Standard Reference Materials

The reference materials listed below are intended to serve as a guide. Every attempt should be made to acquire pure reference materials that are comparable to sample materials being analyzed.

- Chrysotile: UICC Canadian, or NIEHS Plastibest. (UICC reference materials available from: UICC, MRC Pneumoconiosis Unit, Llandough Hospital, Penarth, Glamorgan, CF61XW, UK).
- Crocidolite: UICC
- Amosite: UICC
- Anthophyllite: UICC
- Tremolite Asbestos: Wards Natural Science Establishment, Rochester, N.Y.; Cyprus Research Standard, Cyprus Research, 2435 Military Ave., Los Angeles, CA 90064 (washed with dilute HCl to remove small amount of calcite impurity); India tremolite, Rajasthan State, India.
- Actinolite Asbestos

2.6.2 Adhesive

Tape, petroleum jelly, etc. (for attaching silver membrane filters to sample holders).

2.6.3 Surfactant

1 percent aerosol OT aqueous solution or equivalent.

2.6.4 Isopropanol

ACS Reagent Grade.

2.7 Procedure

2.7.1 Sampling

Samples for analysis of asbestos content shall be collected as specified in EPA Guidance Document #C0090, *Asbestos-Containing Materials in School Buildings*.¹⁰

2.7.2 Analysis

All samples must be analyzed initially for asbestos content by PLM. XRD should be used as an auxiliary method when a second, independent analysis is requested.

Note.—Asbestos is a toxic substance. All handling of dry materials should be performed in an operating fume hood.

2.7.2.1 Sample Preparation

The method of sample preparation required for XRD analysis will depend on: (1) the condition of the sample received (sample size, homogeneity, particle size distribution, and overall composition as determined by PLM); and (2) the type of XRD analysis to be performed (qualitative, quantitative, thin layer or bulk).

Bulk materials are usually received as inhomogeneous mixtures of complex composition with very wide particle size distributions. Preparation of a homogeneous, representative sample from asbestos-containing materials is particularly difficult because the fibrous nature of the asbestos minerals inhibits mechanical mixing and stirring, and because milling procedures may cause adverse lattice alterations.

A discussion of specific matrix reduction procedures is given below. Complete methods of sample preparation are detailed in Sections 2.7.2.2 and 2.7.2.3.

Note.—All samples should be examined microscopically before and after each matrix reduction step to monitor changes in sample particle size, composition, and crystallinity, and to ensure sample representativeness and homogeneity for analysis.

2.7.2.1.1 Milling.—Mechanical milling of asbestos materials has been shown to decrease fiber crystallinity, with a resultant decrease in diffraction intensity of the specimen; the degree of lattice alteration is related to the duration and type of milling process.^{19, 20} Therefore, all milling times should be kept to a minimum.

For qualitative analysis, particle size is not usually of critical importance and initial characterization of the material with a minimum of matrix reduction is often desirable to document the composition of the sample as received. Bulk samples of very large particle size (>2–3 mm) should be comminuted to ~100 µm. A mortar and pestle can sometimes be used in size reduction of soft or loosely bound materials though this may cause matting of some samples. Such samples may be reduced by cutting with a razor blade in a mortar, or by grinding in a suitable mill (e.g., a microhammer mill or equivalent). When using a mortar for grinding or cutting, the sample should be moistened with ethanol, or some other suitable wetting agent, to minimize exposures.

For accurate, reproducible quantitative analysis, the particle size of both sample and standard materials should be reduced to ~10 µm (see Section 2.3.3). Dry ball milling at liquid nitrogen temperatures (e.g., Spex Freezer Mill, or equivalent) for a maximum time of 10 min. is recommended to obtain satisfactory particle size distributions while protecting the integrity of the crystal lattice.⁶ Bulk samples of very large particle size may require grinding in two stages for full matrix reduction to <10 µm.^{8, 10}

Final particle size distributions should always be verified by optical microscopy or another suitable method.

2.7.2.1.2 Low temperature ashing.—For materials shown by PLM to contain large amounts of gypsum, cellulosic, or other organic materials, it may be desirable to ash the samples prior to analysis to reduce background radiation or matrix interference. Since chrysotile undergoes dehydroxylation at temperatures between 550° C and 650° C, with subsequent transformation to forsterite,^{23, 24} ashing temperatures should be kept below 500° C. Use of a low temperature ashing is recommended. In all cases, calibration of the oven is essential to ensure that a maximum ashing temperature of 500° C is not exceeded.

2.7.2.1.3 Acid leaching.—Because of the interference caused by gypsum and some carbonates in the detection of asbestiform minerals by XRD (see Section 2.3.1), it may be necessary to remove these interferents by a simple acid leaching procedure prior to analysis (see Section 1.7.2.2).

2.7.2.2 Qualitative Analysis

2.7.2.2.1 Initial screening of bulk material.—Qualitative analysis should be performed on a representative, homogeneous portion of the sample with a minimum of sample treatment.

1. Grind and mix the sample with a mortar and pestle (or equivalent method, see Section 2.7.2.1.1.) to a final particle size sufficiently small (~100 µm) to allow adequate packing into the sample holder.

2. Pack the sample into a standard bulk sample holder. Care should be taken to ensure that a representative portion of the milled sample is selected for analysis. Particular care should be taken to avoid possible size segregation of the sample. (Note: Use of a back-packing method²⁵ of bulk sample preparation may reduce preferred orientation effects.)

3. Mount the sample on the diffractometer and scan over the diagnostic peak regions for the serpentine (~67.4 Å) and amphibole (8.2–6.5 Å) minerals (see Table 2–2). The X-ray diffraction equipment should be optimized for intensity. A slow scanning speed of 1°/2θ/min is recommended for adequate resolution. Use of a sample spinner is recommended.

4. Submit all samples that exhibit diffraction peaks in the diagnostic regions for asbestiform minerals to a full qualitative XRD scan (5°–60° 2θ; 1°/2θ/min) to verify initial peak assignments and to identify potential matrix interferences when subsequent quantitative analysis is to be performed.

5. Compare the sample XRD pattern with standard reference powder diffraction patterns (i.e., JCPDS powder diffraction data³

or those of other well-characterized reference materials). Principal lattice spacings of asbestiform minerals are given in Table 2–2; common constituents of bulk insulation and wall materials are listed in Table 2–3.

2.7.2.2.2 Detection of minor or trace constituents.—Routine screening of bulk materials by XRD may fail to detect small concentrations (<5 percent) of asbestos. The limits of detection will, in general, be improved if matrix absorption effects are minimized, and if the sample particle size is reduced to the optimal 1 to 10 µm range, provided that the crystal lattice is not degraded in the milling process. Therefore, in those instances where confirmation of the presence of an asbestiform mineral at very low levels is required, or where a negative result from initial screening of the bulk material by XRD (see Section 2.7.2.2.1) is in conflict with previous PLM results, it may be desirable to prepare the sample as described for quantitative analysis (see Section 2.7.2.3) and step-scan over appropriate 2θ ranges of selected diagnostic peaks (Table 2–2). Accurate transfer of the sample to the silver membrane filter is not necessary unless subsequent quantitative analysis is to be performed.

2.7.2.3 Quantitative Analysis

The proposed method for quantitation of asbestos in bulk samples is a modification of the NIOSH-recommended thin-layer method for chrysotile in air.⁸ A thick-layer or bulk method involving pelletizing the sample may be used for semiquantitative analysis;^{7, 8} however, this method requires the addition of an internal standard, use of a specially fabricated sample press, and relatively large amounts of standard reference materials. Additional research is required to evaluate the comparability of thin- and thick-layer methods for quantitative asbestos analysis.

For quantitative analysis by thin-layer methods, the following procedure is recommended:

1. Mill and size all or a substantial representative portion of the sample as outlined in Section 2.7.2.1.1.

2. Dry at 100° C for 2 hr; cool in a desiccator.

3. Weigh accurately to the nearest 0.01 mg.

4. Samples shown by PLM to contain large amounts of cellulosic or other organic materials, gypsum, or carbonates, should be submitted to appropriate matrix reduction procedures described in Sections 2.7.2.1.2 and 2.7.2.1.3. After ashing and/or acid treatment, repeat the drying and weighing procedures described above, and determine the percent weight loss; L.

5. Quantitatively transfer an accurately weighed amount (50–100 mg) of the sample to a 1-L volumetric flask with approximately 200 mL isopropanol to which 3 to 4 drops of surfactant have been added.

6. Ultrasonicate for 10 min at a power density of approximately 0.1 W/mL, to disperse the sample material.

7. Dilute to volume with isopropanol.

8. Place flask on a magnetic stirring plate. Stir.

9. Place a silver membrane filter on the filtration apparatus, apply a vacuum, and attach the reservoir. Release the vacuum and

add several milliliters of isopropanol to the reservoir. Vigorously hand shake the asbestos suspension and immediately withdraw an aliquot from the center of the suspension so that total sample weight, W_T , on the filter will be approximately 1 mg. Do not adjust the volume in the pipet by expelling part of the suspension; if more than the desired aliquot is withdrawn, discard the aliquot and resume the procedure with a clean pipet. Transfer the aliquot to the reservoir. Filter rapidly under vacuum. Do not wash the reservoir walls. Leave the filter apparatus under vacuum until dry. Remove the reservoir, release the vacuum, and remove the filter with forceps. (Note: Water-soluble matrix interferences such as gypsum may be removed at this time by careful washing of the filtrate with distilled water. Extreme care should be taken not to disturb the sample.)

10. Attach the filter to a flat holder with a suitable adhesive and place on the diffractometer. Use of a sample spinner is recommended.

11. For each asbestos mineral to be quantitated select a reflection (or reflections) that has been shown to be free from interferences by prior PLM or qualitative XRD analysis and that can be used unambiguously as an index of the amount of material present in the sample (see Table 2-2).

12. Analyze the selected diagnostic reflection(s) by step scanning in increments of $0.02^\circ 2\theta$ for an appropriate fixed time and integrating the counts. (A fixed count scan may be used alternatively; however, the method chosen should be used consistently for all samples and standards.) An appropriate scanning interval should be selected for each peak, and background corrections made. For a fixed time scan, measure the background on each side of the peak for one-half the peak-scanning time. The net intensity, I_a , is the difference between the peak integrated count and the total background count.

13. Determine the net count, I_{Ag} , of the filter 2.36° silver peak following the procedure in step 12. Remove the filter from the holder, reverse it, and reattach it to the holder. Determine the net count for the unattenuated silver peak, I_{Ag}^0 . Scan times may be less for measurement of silver peaks than for sample peaks; however, they should be constant throughout the analysis.

14. Normalize all raw, net intensities (to correct for instrument instabilities) by referencing them to an external standard (e.g. the 3.34° peak of an α -quartz reference crystal). After each unknown is scanned, determine the net count, I_r^0 , of the reference specimen following the procedure in step 12. Determine the normalized intensities by dividing the peak intensities by I_r^0 :

$$\hat{I}_a = \frac{I_a}{I_r^0}, \quad \hat{I}_{Ag} = \frac{I_{Ag}}{I_r^0}, \quad \text{and} \quad \hat{I}_{Ag}^0 = \frac{I_{Ag}^0}{I_r^0}$$

2.8 Calibration

2.8.1 Preparation of Calibration Standards

1. Mill and size standard asbestos materials according to the procedure outlined in Section 2.7.2.1.1. *Equivalent, standardized*

matrix reduction and sizing techniques should be used for both standard and sample materials.

2. Dry at 100°C for 2 hr; cool in a desiccator.

3. Prepare two suspensions of each standard in isopropanol by weighing approximately 10 and 50 mg of the dry material to the nearest 0.01 mg. Quantitatively transfer each to a 1-L volumetric flask with approximately 200 mL isopropanol to which a few drops of surfactant have been added.

4. Ultrasonicate for 10 min at a power density of approximately 0.1 W/mL, to disperse the asbestos material.

5. Dilute to volume with isopropanol.

6. Place the flask on a magnetic stirring plate. Stir.

7. Prepare, in triplicate, a series of at least five standard filters to cover the desired analytical range, using appropriate aliquots of the 10 and 50 mg/L suspensions and the following procedure.

Mount a silver membrane filter on the filtration apparatus. Place a few milliliters of isopropanol in the reservoir. Vigorously hand shake the asbestos suspension and immediately withdraw an aliquot from the center of the suspension. Do not adjust the volume in the pipet by expelling part of the suspension; if more than the desired aliquot is withdrawn, discard the aliquot and resume the procedure with a clean pipet. Transfer the aliquot to the reservoir. Keep the tip of the pipet near the surface of the isopropanol. Filter rapidly under vacuum. Do not wash the sides of the reservoir. Leave the vacuum on for a time sufficient to dry the filter. Release the vacuum and remove the filter with forceps.

2.8.2 Analysis of Calibration Standards

1. Mount each filter on a flat holder. Perform step scans on selected diagnostic reflections of the standards and reference specimen using the procedure outlined in Section 2.7.2.3, step 12, and the same conditions as those used for the samples.

2. Determine the normalized intensity for each peak measured, $\hat{I}_{std}$, as outlined in Section 2.7.2.3, step 14.

2.9 Calculations

For each asbestos reference material, calculate the exact weight deposited on each standard filter from the concentrations of the standard suspensions and aliquot volumes. Record the weight, w , of each standard. Prepare a calibration curve by regressing $\hat{I}_{std}$ on w . Poor reproducibility (± 15 percent RSD) at any given level indicates problems in the sample preparation technique, and a need for new standards. The data should fit a straight line equation.

Determine the slope, m , of the calibration curve in counts/microgram. The intercept, b , of the line with the $\hat{I}_{std}$ axis should be approximately zero. A large negative intercept indicates an error in determining the background. This may arise from incorrectly measuring the baseline or from interference by another phase at the angle of background measurement. A large positive intercept indicates an error in determining the baseline or that an impurity is included in the measured peak.

Using the normalized intensity, $\hat{I}_{Ag}$, for the attenuated silver peak of a sample, and the corresponding normalized intensity from the

unattenuated silver peak, $\hat{I}_{Ag}^0$, of the sample filter, calculate the transmittance, T , for each sample as follows:^{26 27}

$$T = \frac{\hat{I}_{Ag}}{\hat{I}_{Ag}^0}$$

Determine the correction factor, $f(T)$, for each sample according to the formula:

$$f(T) = \frac{-R (\ln T)}{1 - T^R}$$

where

$$R = \frac{\sin \theta_{Ag}}{\sin \theta_a}$$

θ_{Ag} = angular position of the measured silver peak (from Bragg's Law), and
 θ_a = angular position of the diagnostic asbestos peak.

Calculate the weight, W_a , in micrograms, of the asbestos material analyzed for in each sample, using the appropriate calibration data and absorption corrections:

$$W_a = \frac{\hat{I}_a f(t) - b}{m}$$

Calculate the percent composition, P_a , of each asbestos mineral analyzed for in the parent material, from the total sample weight, W_T , on the filter:

$$P_a = \frac{W_a (1 - 0.01L)}{W_T} \times 100$$

where

P_a = percent asbestos mineral in parent material;

W_a = mass of asbestos mineral on filter, in μg ;

W_T = total sample weight on filter, in μg ;

L = percent weight loss of parent material on ashing and/or acid treatment (see Section 2.7.2.3).

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1982 Great Lakes Federal Register

Thursday
May 27, 1982

Part V

Department of the Interior

National Park Service

World Heritage Convention

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR 73

World Heritage Convention

AGENCY: National Park Service, Interior.

ACTION: Final rules.

SUMMARY: These rules set forth the policies and procedures that the Department of the Interior, through the National Park Service, uses to direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, including the identification and preparation of U.S. nominations to the World Heritage List, and other activities under the Convention. The rules draw on the Department's experience with implementing the Convention following its ratification by the United States Senate on October 26, 1973, and incorporate the requirements contained in the National Historic Preservation Act Amendments of 1980. The rules formalize the Department's World Heritage procedures, and make available to other Federal agencies, State and local governments, private organizations, and individuals information on the Convention and means through which they may participate.

EFFECTIVE DATE: June 28, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Ritsch, Associate Director, Recreation Resources, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240 (202-343-4462).

SUPPLEMENTARY INFORMATION:**Program Information**

The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 62 other Nations as of this date, has established a means through which natural and cultural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

The Convention complements each participating nation's heritage conservation programs and provides for:

a. The establishment of an elected 21-member nation World Heritage Committee assisted by UNESCO to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

b. The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

c. The preparation of a List of World Heritage in Danger;

d. The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;

e. The provision of technical assistance to participating countries, upon request; and

f. The promotion and enhancement of public knowledge and understanding of the vital importance of heritage conservation at the international level.

Each participating nation may identify and nominate its own sites for inclusion on the World Heritage List, which currently is comprised of 112 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of World Heritage properties situated within its borders.

The Federal Interagency Panel for World Heritage makes recommendations to the Department of the Interior on proposed U.S. nominations and related matters. The Panel currently includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; and the Department of State.

The Department of the Interior implements its responsibility under the World Heritage Convention in accordance with the statutory mandate of Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515), which reads as follows:

Title IV—International Activities and World Heritage Convention**Section 401**

a. The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the

Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

b. The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

c. No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

Section 402

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects."

World Heritage Rulemaking

On January 13, 1981, the Department of the Interior published interpretive guidelines for implementing the World Heritage Convention (46 FR 3073). The guidelines set forth the interpretation that the Department used to carry out provisions of Title IV of the National Historic Preservation Act Amendments of 1980 on an interim basis pending publication of formal rules.

The final World Heritage rules are based on provisions of the January 13, 1981, interpretative guidelines (46 FR 3073) and the October 20, 1981, proposed rules (46 FR 51557), and the public

comments that have been received on both of these documents. A summary and discussion of public comments received on the proposed World Heritage rules follows. The two comments received on the interpretive guidelines dealt with the past restriction of U.S. nominations to only Federal properties, and were discussed in the proposed rules (46 FR 51559).

Summary of Public Comments

A total of 23 comments were received on the proposed World Heritage rules. Responses were received from agencies represented on the Federal Interagency Panel for World Heritage, other Federal agencies, national conservation and preservation organizations, and individuals. All comments have been studied carefully and considered in the preparation of the final rules. The following discussion of public comments is divided into two broad categories, the first dealing with general comments and the second containing a section-by-section analysis.

a. General Comments. Of the 23 written responses, 13 respondents expressed support for the proposed rules as published, complimenting them as, among other things, "clearly written," "thorough," "very comprehensive," "clear and logical," "soundly conceived," and "useful" in guiding U.S. participation in the World Heritage Convention. Nine respondents indicated that they had no substantive comments or recommendations to offer on the proposed rules. One respondent focused on the importance of the detailed procedures for screening potential U.S. nominations and complimented the composition of the Federal Interagency Panel for World Heritage. This respondent also expressed the belief that the U.S. should limit its nominations to three or four a year at most, and that any U.S. nominations should be clearly worthy of the high honor associated with World Heritage status.

Four respondents commented in general terms on the provision which now affords the opportunity for nomination of non-Federal (e.g., State, local, private) properties for World Heritage status, with three expressing strong support, e.g., " * * * particularly pleased that provision has been made for the inclusion of privately owned historic properties, with appropriate legal protective covenants," and " * * * delighted that they include provisions for the nomination of non-Federal properties. This is a major step forward, not only practically, but also symbolically." One respondent expressed reservation with respect to the nomination of non-Federal

properties, however, noting "isn't it likely that only those landmarks protected by the Federal Government have sufficient legal protection to insure preservation?" Nomination of non-Federal properties is provided for by Title IV of the 1980 National Historic Preservation Act Amendments (16 U.S.C. 470 a-1), provided that the owner concurs in such nomination and adequate protection measures are taken. The protection provisions contained in § 73.13 of these rules are the products of an evolutionary process which has seen the scope of U.S. nominations expanded from only federally owned or controlled properties, to all types of public properties in 1980, and finally to public and private properties. Sufficient protection measures must be demonstrated, e.g., management plans, covenants, easements, etc., to ensure that U.S. properties, prior to their nomination, will be effectively maintained and protected.

One respondent encouraged the involvement of non-governmental organizations in the workings of the elected, 21-member-nation World Heritage Committee. While delegates on the Committee must be official representatives of their countries, non-governmental organizations participate in World Heritage activities at national and international levels, most notably the International Union for the Conservation of Nature and Natural Resources (IUCN) and the International Council on Monuments and Sites (ICOMOS) which serve as technical advisers to the World Heritage Committee. In the U.S., extensive opportunities for public involvement in World Heritage activities are afforded throughout the nomination process (Sec. 73.7).

b. Section-by-Section Analysis.

§ 73.1—Purpose.

No comments were received on this section.

§ 73.7—Definitions.

No comments were received on this section. A part of the definition for "World Heritage Committee" is changed to correctly read, " * * * countries represented on the Committee are elected by participating nations and serve for three sessions of the UNESCO General Conference (six years)."

§ 73.5—Authority.

No comments were received on this section.

§ 73.7—U.S. World Heritage Nomination Process.

The majority of comments received on the proposed rules dealt with one or

more aspects of the U.S. World Heritage nomination process which, in effect, constitutes the focal point for this country's implementation of the Convention. One respondent made the general observation that the nomination process should place great emphasis on comparative evaluation of similar types of properties to identify only those few superlative areas that should be ultimately nominated for World Heritage status. Reference to comparative evaluation has been reinforced in the evaluation process to highlight the importance of this aspect of the nomination process.

Several comments were received on the requirements that U.S. Properties must satisfy to be considered for nomination (§ 73.7(b)(2)). Two respondents commented on the requirement that U.S. properties must have been determined to be of "national significance" prior to their nomination to the World Heritage List (16 U.S.C. 470a-1). One respondent observed that the proposed rules "establish even further limitations than those contained in the World Heritage Convention and its enabling legislation" because they "restrict such consideration to properties already designated as National Historic Landmarks or National Natural Landmarks." This respondent concludes by asking, "could the matter of 'national significance' be tested by other documentation and resolved at the Interagency Panel level." Landmark designation is not necessarily a prerequisite for nomination of a U.S. site for World Heritage status. The proposed rules provide other means for determining national significance, such as areas of national significance established by the Congress or the President, e.g., national parks, monuments, or wildlife refuges.

However, it is clear from the legislative history of the 1980 Amendments that the Congress intended the landmarks programs to play a central role in the determination of national significance for potential U.S. World Heritage nominations and in the subsequent evaluation of nominations: "it is expected that determination of national significance will primarily be made through the existing National Historic Landmarks and National Natural Landmarks programs." (U.S. House of Representatives Report 96-1457, October 10, 1980, p. 44.) Thus, with this clear indication of Congressional intent and their usefulness in providing professional guidance, the landmarks programs are retained in the final rules as important tools for determining national significance. A second

respondent suggested that the rules "allow for unusual areas of world potential concern that still may not be of U.S. national significance," referring to the possibility of nominating properties in territories not under some form of U.S. jurisdiction. As each country is responsible for setting its own policies and requirements for implementing the Convention, the national significance requirement, as elaborated in the rules, applies only to the U.S. This country can only unilaterally nominate U.S. properties for World Heritage status, as the World Heritage Convention states very clearly at several points that participating nations are responsible for identifying and nominating properties situated in their territory. Thus, it would be inappropriate and, in fact, in violation of the Convention to unilaterally nominate properties which are situated in other nations.

One respondent urged that the section dealing with the requirement for owner concurrence ((b)(2)(ii)) be clarified to better describe the types of owners or interests whose concurrence must be obtained, i.e., to more fully define "owner concurrence." This respondent cited examples of less-than-fee ownership, such as mineral rights and utility rights-of-way, and inholdings and concessions in national parks, thus raising the question whether their concurrence would be needed before their property could be nominated for World Heritage status. The requirement to obtain owner consent for private property is contained in Title IV of Pub. L. 96-515 (16 U.S.C. 470a-1), and has been applied in the rules to all owners, public and private. To more fully define owner concurrence, this section of the rules has been rewritten to specify that, in the case of multiple ownership, only those properties and/or interests in property whose owners consent to nomination are included within the World Heritage nomination. Concurrence of owners with property interest in the site, such as rights-of-way or mineral rights, will be sought if such interests are determined to be integral to the property's outstanding universal value. If consent is not granted, by law that portion of land or interest could not be a part of the nomination. A nomination would be forwarded only if it is determined that the property's outstanding universal values are well represented and protected.

One respondent raised an important question involving the requirement ((b)(2)(iii)) that the nomination document for a property include evidence of such legal protections as may be necessary to ensure the

preservation of the property and its environment (16 U.S.C. 470a-1), asking, "must the area show proof of being protected before it can be a member area of the World Heritage Convention which has a stated goal of preserving [such areas]? There seem to be areas which could be of universal importance which lack the necessary evidence of protection." This observation raises the philosophical question of whether the Convention is concerned with only outstanding properties that are adequately protected, or whether the full range of outstanding properties potentially eligible for World Heritage status should be considered. Despite this inherent contradiction, however, the U.S. has international and domestic mandates to ensure that its World Heritage properties are adequately protected. Article 5 of the Convention requires each participating nation to take appropriate legal, scientific, technical, administrative and financial measures necessary for the protection, conservation, and rehabilitation of World Heritage properties situated within its borders. As discussed above, Title IV of Pub. L. 96-515 requires that evidence of protection be incorporated into nomination documents. While the protection requirement may exclude certain properties, it effectively fulfills the treaty commitment of the U.S. under the Convention and the Congressional mandate of Pub. L. 96-515. It should be noted that the World Heritage Convention deals with superlative cultural and natural properties; in the U.S., such areas are generally under some form of protective management.

Two respondents commented on the inventory of potential future U.S. World Heritage nominations and its role in the overall nomination process. One noted that the inventory could serve as a highly visible public listing that would encourage preservation of sites appearing on it, even if they were not ultimately nominated. This respondent also suggested that properties could be included on the inventory even if they did not satisfy all the requirements for nomination, e.g., owner concurrence, national significance, protection. These are the requirements that U.S. properties must satisfy to be nominated to the List, but are not absolutely required for inclusion on the inventory. During its development, the inventory has been widely distributed to agencies, organizations, and individuals in an effort to ensure that listed areas appear to merit World Heritage status, and to increase public awareness and appreciation of World Heritage. A second respondent raised a larger, more

fundamental question regarding the relationship of the inventory to the annual nomination process: "Specifically, how does the indicative inventory relate to the list of sites suggested each year in response to the January Federal Register solicitation? Is the Assistant Secretary's selection of potential nominations based only on suggestions on sites received that year through the January Federal Register notice or are potential nominations also to be selected from the indicative inventory?" As 1982 is the first year that a formal U.S. World Heritage inventory has been in existence, the inventory represents a recent refinement in the annual evaluation process that ultimately produces U.S. nominations by first identifying potential and then proposed nominations for a given year. Since the inventory is the compilation of potential future nominations and is based on extensive public and professional study and comment, the nomination process has been restructured in the final rules to bring the inventory squarely into the annual process from the outset. Accordingly, in an effort to focus attention on the inventory early in the process, to streamline the nomination process itself, and to provide much needed additional time for actually preparing nomination documents, the potential nomination phase in the proposed rules (formerly Sec. 73.7(b)(4)) has been replaced by the inventory, which is the listing of potential future nominations. The inventory itself is not static, and will be revised as circumstances warrant. The nomination process remains on a calendar year basis, initiated through the January notice which will now focus on the inventory. A mechanism has been built into the final rules through which properties suggested for nomination but which have not yet been included on the inventory may be added to the inventory if qualified, and thus considered for nomination in future years. Thus, the annual nomination process, as defined in the final rules, flows from the inventory (potential nominations) to proposed nominations to approved nominations, provided that the requirements of each of these stages is met.

With the exception of this change, the nomination process set forth in the final rules remains much as it was in the proposed rules. One respondent emphasized that "public participation and comment are a highly desirable part of the review process," and recommended that the 30-day comment period in § 73.7(b)(4) be expanded to 45 or 60 days. To ensure that interested

parties have sufficient opportunity to make recommendations on potential nominations early in the process, a comment period of not less than 60 days is provided in § 73.7(b)(3) of the final rules.

Three respondents commented on the factors used in the selection of potential U.S. World Heritage nominations (§ 73.7(b)(4) (i)-(vi)). One observed that the rules should discuss the relative importance of each of the factors in identifying U.S. nominations, noting "it is unclear what weight is placed on the various 'other' factors in the nomination process, which are in addition to the formal 'criteria'" that have been adopted by the World Heritage Committee. The fundamental consideration in identifying U.S. nominations is how well the property satisfies one or more of the criteria used by the World Heritage Committee in evaluating nominations (§ 73.9), i.e., whether the site appears to be of outstanding universal value to mankind. Once this test appears to be met, the legislative requirements discussed earlier, i.e., national significance, protection, concurrence, are considered. Finally, a number of other considerations enter into the decision, such as how well the particular type of resource is already represented on the World Heritage List. It is neither possible nor desirable to attach exact weights to each factor in the qualitative World Heritage evaluation process that relies on professional, scholarly judgment and expertise.

One respondent noted that consideration (iv), "the balance between cultural and natural properties already included on the List and those currently under consideration," "was irrelevant" and that "each property should be considered on its own merits. If it qualifies, it should be nominated regardless of whether it is a cultural or natural resource." This consideration, and the others listed in (§ 73.7(b)(4)), are used as general factors in the evaluation process and not as absolute requirements. A third respondent stated that, "potential threats and state of preservation factors are of such great importance that they (should) be listed separately." To address all of these comments, this section of the final rules has been written to more clearly emphasize the hierarchy of factors considered in the selection of U.S. nominations, with potential threats and state of preservation appearing as a separate factor.

Three respondents offered comments on some aspect of the notification process (§ 73.7 (c) and (g)), with one

urging that the rules include provisions for the preparation and distribution of press releases to supplement the Federal Register notices. Press releases are currently an integral part of the process, and reference to their use is now included in the final rules. A second respondent asked, "should there be any provision for notifying the party or parties who originally suggested the site, if these are different from the property owner(s)?" As a part of the nomination process, interested parties who are known to the Department are notified of the nomination through Federal Register notices and press releases. A third respondent emphasized the importance of close cooperation with appropriate land managers in the preparation of World Heritage nominations.

This goal is accomplished through extensive opportunities for public and professional involvement throughout the nomination process, through preparation of nomination documents by the appropriate management official, and through the provision for owner concurrence prior to nomination.

One respondent noted that the rules do not include procedures that could be used specifically for bilateral nominations with neighboring countries, e.g., Rio Grande Valley, Glacier/Banff National Parks. Any bilateral nomination is subject not only to the same process and requirements as a property which is nominated by this country alone, but also to the relevant requirements of the neighboring country. The requirements which other countries may impose on their World Heritage nominations are not subject to U.S. rulemaking. Accordingly, specific reference to bilateral nominations is not included in the final rules; existing procedures would be employed in the event of a bilateral nomination.

One final comment on the nomination process dealt with the actual preparation of nominations (§ 73.7(d)), noting that "it is probably unreasonable to assume that private (or for that matter, public) owners have either the wherewithal or technical capacity to prepare nominations. We suggest a 'critical or unusual' circumstances clause which would provide for preparation of nominations by the NPS." The proposed rules stated that NPS would cooperate with non-NPS owners or managers in nomination preparation, but noted that responsibility for actual preparation of the nomination document drafting lies with the property's owner(s). Several benefits, e.g., firsthand knowledge of the site and its environment, commitment to site protection, and incorporation of World

Heritage into management and interpretive plans, are associated with having nominations prepared at the field level. NPS provides technical assistance in the preparation process, e.g., providing examples of previous nominations, criteria, guidelines for preparing nominations, and is available to assist as staff and budget permit. However, the degree of NPS involvement in nomination preparation is an administrative decision not appropriate for incorporation into formal rules.

§ 73.9—World Heritage Criteria.

Four respondents commented on the criteria which have been adopted by the 21-member nation World Heritage Committee for evaluating sites which have been nominated for World Heritage status. All four discussed some aspect of the criteria used for evaluating natural properties (§ 73.9 (b)), with one labeling the criteria as "very weak," stating "much more thought needs to be given to providing good criteria, not examples, for natural sites of universal value to mankind." The World Heritage Committee made some refinements in the cultural and natural criteria in 1980, and as time passes and greater experience is gained in administering the Convention, further changes are likely to be made. The U.S., through the Department of the Interior and the Federal Interagency Panel for World Heritage, is an active participant in developing policies and procedures for carrying out the mandates of the Convention. However, while this country may suggest proposals for changes in criteria, only the 21-nation World Heritage Committee can adopt changes to the criteria.

A second respondent observed that, "it is necessary to be very precise in establishing criteria governing the kinds of ecological resources which are suitable for nomination as World Heritage sites, so as to distinguish these sites from other designations" (such as Man and the Biosphere's (MAB) Biosphere Reserve designation). The distinction between sites inscribed on the World Heritage List and other international programs is found in the basic purpose and philosophy of the different programs. The World Heritage Convention, an international treaty ratified by over 60 countries, recognizes natural and cultural properties of outstanding universal value to mankind, while other programs have differing goals, such as MAB's Biosphere Reserve effort to designate natural areas that best represent the different biogeographic realms of the earth, and

to encourage scientific research on environmental problems of international significance. The difference between programs is further manifest in different policies, procedures, and criteria. World Heritage status is reserved for only those properties of demonstrated superlative international importance. This respondent also raised another point related to the criteria, this one pertaining to the boundaries of World Heritage nominations: "the boundaries may not necessarily coincide with the boundaries of other legally protected areas, such as natural landmarks and biosphere reserves * * * it is necessary to ensure that the value of the World Heritage Site is optimized by designating only the areas which specifically qualify and by encouraging the long-term protection and effective management of the areas in a manner befitting their importance to mankind." As earlier discussed, a property nominated for World Heritage status must be adequately protected; thus, the extent of protective ownership must be considered in delineating boundaries. However, the fundamental test is whether the nominated property included within the boundaries meets one or more of the criteria for outstanding universal value. To more fully address the concerns raised in this comment, a reference to boundary identification is included in the final rules in § 73.7(d).

A third respondent raised a question over the role of the World Heritage Convention in protecting threatened and endangered species. One of the World Heritage criteria (§ 73.9(b)(1)(iv)) pertains specifically to threatened species. If a property contains "the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive," it may be inscribed on the World Heritage List. However, the Convention is not intended to duplicate other international and domestic efforts specifically directed towards preserving endangered species.

The fourth respondent questioned, "whether the proposed regulations are intended to modify the criteria for determining National Natural Landmarks by adding threatened species habitat as a specific consideration," reasoning that "because nomination to the World Heritage List is contingent upon recognition as a National Natural Landmark, and because threatened species habitat is not a criterion for designation as a National Natural Landmark, these

regulations appear to be changing the National Natural Landmark designation" process. The World Heritage criteria as presented in the proposed rules are distinct from those employed in the National Natural Landmarks Program (36 CFR 62). Nomination of a U.S. site for World Heritage status is not always contingent on prior recognition as a natural landmark, as areas of national significance established by the Congress (such as national parks or national wildlife refuges) or the President (such as national monuments) are also considered for possible nomination. The threatened species criterion (§ 73.9(b)(1)(iv)) is one factor used by the World Heritage Committee in its evaluation of World Heritage potential. The World Heritage rules do not alter the procedures or criteria for designating national natural landmarks.

§ 73.11—Federal Interagency Panel for World Heritage.

In all, three respondents commented on the composition of the Federal Interagency Panel for World Heritage, which has been formed to assist the Department of the Interior in carrying out its World Heritage responsibilities. Two respondents discussed the possible role of the National Park System Advisory Board in the Interagency Panel, specifically with respect to the nomination process. One respondent noted that while the Advisory Board has a valuable role to play in identifying specific properties as U.S. nominations, a provision for Advisory Board participation does not need to be included in the program rules: "because the rules are written for the conduct of the program by the Assistant Secretary, the manner in which the National Park Service provides staff and services to the Assistant Secretary's interagency panel is best left to the discretion of the Panel and the participatory agencies." NPS, which serves on the Panel, may involve the National Park System Advisory Board in the nomination process without having such reference in the rules, just as other NPS administrative units, e.g., International Affairs, Natural Landmarks, Historic Landmarks, etc., are involved. A second respondent queried whether it would be "in order for the Chairman of the National Park Advisory Board to be a member of the Panel." As discussed, participation by the Board in World Heritage activities can be accomplished through informal means not subject to rulemaking.

A third respondent noted that "in view of the potential importance of the estuarine sanctuary and marine

sanctuary programs * * * and the desirability of considering estuarine and marine areas as World Heritage Sites, it would seem appropriate to add the Department of Commerce (National Oceanic and Atmospheric Administration—NOAA) to the list of agencies represented on the Panel." To further the goal of broad, professional representation on the Interagency Panel, a request was made to NOAA's Administrator inviting that agency's participation on the Panel and, based on a favorable response, a representative from the NOAA Sanctuary Programs office will participate in Panel activities.

§ 73.13—Protection of U.S. World Heritage Sites

As discussed in the overview of general comments (Part A above), non-Federal properties are now eligible for consideration for U.S. nomination to the World Heritage List, provided they meet the criteria (§ 73.9) and the requirements set forth in § 73.7(b). In particular, their nomination document must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment. Many aspects of the protection requirements were discussed earlier under § 73.7, specifically the treaty and legislative protection requirements, and the need for owner concurrence. In addition to that discussion, two respondents raised additional points regarding protection of World Heritage Sites. One respondent noted that viable management plans are an important tool which should be in place for World Heritage nominations. While not specifically mentioned in the proposed rules, reference to management plans is made through the phrase, "existing and proposed administrative measures that would ensure continued satisfactory maintenance of the property." Explicit reference to management plans has been included in the final rules.

Another respondent suggested that, in the case of both private and non-Federal public properties, "could nomination be accompanied by a right of first refusal for Federal Government acquisition of listed properties in the event of any sale, succession, transfer, or disposal that would lead to an inability to appropriately maintain or preserve the listed property?" In the proposed rules, the right of first refusal was applied only to private properties and did not necessarily contemplate Federal acquisition. The right of first refusal resulting in governmental acquisition is one means of protection that could be utilized to help preserve a World

Heritage property. Unless specifically authorized, however, regulations for program implementation cannot commit the Federal Government to acquire lands at a future date. Pub. L. 96-515 does not authorize acquisition or right of first refusal for World Heritage Sites. If the owner of a property offers a right, and if there is an authorized acceptance of such a right and a binding legal commitment to act upon it, such a right could be accepted as part of the protection measures required by 16 U.S.C. 470a-1. Adequate protection through a right of first refusal is secured only if there is both a right to acquire and adequate authority and funds to accomplish the acquisition when the opportunity may arise. For example, a right of first refusal running to the Department of the Interior would be effective only if authority exists to acquire the property in question, and authorized and appropriated funding is available. Effective protection measures not subject to future contingencies must be in place prior to nomination. Thus, the qualifying term, "if the owner(s) is willing", has been added to the provision indicating that the owner of the property may offer the right, but is not required to. Where such a right is used to help fulfill the protection requirement, a binding commitment and assurance of funds would have to accompany owner willingness.

§ 73.15—International World Heritage Activities.

One respondent commented on the provisions of this section, asking whether it would be "possible to reference any responsibilities of the Secretary (of the Interior) with regard to providing training and information to other nations concerning preservation of natural properties, even though such responsibilities are not specifically mandated by the 1980 National Historic Preservation Act Amendments?" As noted, the Secretary is authorized to develop and make available to other nations and international organizations training in an information concerning professional methods and techniques for the preservation of historic properties (16 U.S.C. 470d). Although there is no specific legislative mandate for natural conservation training and information in the 1980 Amendments, provisions in other statutes, such as Section 8 of the Endangered Species Act of 1973 (Pub. L. 93-205; 16 U.S.C. 1537) and Section 102 of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 16 U.S.C. 4321 et seq.), authorize such international cooperation activities in the field of natural area conservation. Accordingly, reference to both historic

and natural international cooperation activities is now included in the final rules in order to fully implement this country's treaty commitment under the World Heritage Convention.

§ 73.17—Public Information and Education Activities.

No comments were received on this section.

All comments received on the proposed World Heritage rules are on file with the International Affairs Branch, National Park Service, U.S. Department of the Interior, 1100 L Street, N.W., Room 3121, Washington, D.C. 20240, and are available for public inspection by appointment during normal business hours (7:45 a.m.—4:15 p.m., Monday–Friday).

Delegation of Secretarial Authority

The Secretary of the Interior has delegated to the Assistant Secretary for Fish and Wildlife and Parks his authority to direct and coordinate U.S. participation in the World Heritage Convention, including setting U.S. World Heritage policy and procedures, approving and transmitting U.S. nominations to the World Heritage List, and preparing formal rules to implement the Convention.

Compliance with Other Laws

Pursuant to Executive Order 12291, the Department of the Interior has determined that this document is not a major rule, nor does it have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 et seq.). Under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), it has been determined that the information collected pursuant to §§ 73.7 and 73.13 of the rule does not require OMB clearance since such information, in the form of a protective covenant, would not be collected from more than ten persons in any given year. An environmental assessment of the proposed rules has been prepared in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.). Based on this assessment, it has been determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and that an environmental impact statement is not required. The assessment is on file in the International Affairs Branch, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

Authorship Statement

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List of Subjects in 36 CFR Part 73

World Heritage Convention, Treaties, Environmental protection, Historic preservation, Natural resources.

Title 36 of the Code of Federal Regulations is amended by adding a new Part 73, reading as follows:

PART 73—WORLD HERITAGE CONVENTION

Sec.

73.1 Purpose.

73.3 Definitions.

73.5 Authority.

73.7 World Heritage Nomination Process.

73.9 World Heritage Criteria.

73.11 Federal Interagency Panel for World Heritage.

73.13 Protection of U.S. World Heritage Properties.

73.15 International World Heritage Activities.

73.17 Public Information and Education Activities.

Authority: 94 Stat. 3000; 16 U.S.C. 470 a-1, a-2, d.

Note.—Under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), it has been determined that the information collected pursuant to §§ 73.7 and 73.13 of the rule does not require OMB clearance since such information would not be collected from more than ten persons in any given year.

§ 73.1 Purpose.

The purpose of these rules is to set forth the policies and procedures that the Department of the Interior, through the National Park Service (NPS), uses to direct and coordinate U.S. participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, which was ratified by the Senate on October 26, 1973. The rules describe the procedures used to implement the Convention under the National Historic Preservation Act Amendments of 1980. The purpose of the World Heritage Convention is to enhance worldwide understanding and appreciation of heritage conservation, and to recognize and preserve natural and cultural properties throughout the world that have outstanding universal value to mankind.

§ 73.3 Definitions.

"Cultural Heritage"

Article 1 of the Convention defines "Cultural Heritage" as:

Monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings, and combinations of features, which are of outstanding universal value from the point of view of history, art, or science;

Groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art, or science; and

Sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological, or anthropological points of view.

"Natural Heritage"

Article 2 of the Convention defines "Natural Heritage" as:

Natural features, consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

Geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; and

Natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation, or natural beauty.

"Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage," or "World Heritage Committee," means the Committee established by Article 8 of the Convention and assisted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). It is composed of 21 nations participating in the Convention, and is responsible for implementing the Convention at the international level. Countries represented on the Committee are elected by participating nations and serve for three sessions of the UNESCO General Conference (six years). The Committee establishes criteria which properties must satisfy for inclusion on the World Heritage List, sets policy and procedures, and approves properties for inclusion on the World Heritage List.

"World Heritage Convention," or "Convention," means the Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the U.S. Senate on October 26, 1973.

"World Heritage List," means the List established by Article 11 of the Convention which includes those cultural and natural properties judged to possess outstanding universal value for mankind.

"UNESCO," means the United Nations Educational, Scientific and

Cultural Organization, which provides staff support for the Convention and its implementation.

"Secretary," means the Secretary of the Interior, or the designee authorized to carry out the Secretary's responsibilities.

"Assistant Secretary," means the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, or the designee authorized to carry out the Assistant Secretary's responsibilities.

"Director," means the Director of the National Park Service, U.S. Department of the Interior, or the designee authorized to carry out the Director's responsibilities.

"Department," means the U.S. Department of the Interior.

"Federal Interagency Panel for World Heritage," or "Panel," means the Panel consisting of representatives from the Office of the Assistant Secretary, the National Park Service, and the U.S. Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; and the Department of State.

"Owner," means the individual(s) or organization(s) of record that own private land that is being nominated for World Heritage status, or the head of the public agency, or subordinate to whom such authority has been delegated, responsible for administering public land that is being nominated for World Heritage status.

"Owner concurrence," means the concurrence of all owners of any property interest that is part of the World Heritage nomination.

§ 73.5 Authority.

The policies and procedures contained herein are based on the authority of the Secretary of the Interior under Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 94 Stat. 3000; 16 U.S.C. 470a-1, a-2) which directs the Secretary to ensure and direct U.S. participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the U.S. Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.

§ 73.7 World Heritage Nomination Process.

(a) Overview. The Assistant Secretary periodically nominates properties which appear to be of outstanding universal

value to the World Heritage Committee on behalf of the U.S. The initial identification of properties for nomination, and subsequent preparation, evaluation, and approval of U.S. nominations for properties so identified is an annual process (January-December) which is initiated through a Federal Register notice that includes the indicative inventory of potential future U.S. World Heritage nominations and requests recommendations from interested public and private sources. The Assistant Secretary, working in cooperation with the Federal Interagency Panel for World Heritage, may select a limited number of proposed nominations from the properties on the indicative inventory. A detailed nomination document is prepared for each property identified as a proposed nomination. The Panel reviews the accuracy and completeness of the draft nominations, and makes recommendations to the Assistant Secretary. If approved, the Assistant Secretary transmits the U.S. nominations, through the Department of State, to UNESCO for review and approval by the World Heritage Committee during the following year.

(b) Identification—(1) Requirements. In order for a U.S. property to be considered for possible nomination to the World Heritage List, it must satisfy the following legislative requirements in addition to satisfying one or more of the World Heritage criteria (§ 73.9):

(i) The property must have previously been determined to be of national significance (16 U.S.C. 470a-1). For the purposes of these rules, "national significance," refers to properties designated as National Historic Landmarks (36 CFR Part 65) or National Natural Landmarks (36 CFR Part 62) by the Secretary of the Interior under provisions of the 1935 Historic Sites Act (Pub. L. 74-292; 49 Stat. 666; 16 U.S.C. 461 et seq.), or areas of national significance established by the Congress of the U.S. or by Presidential proclamation under the Antiquities Act of 1906 (16 U.S.C. 433);

(ii) The property's owner(s) must concur in writing to the nomination (16 U.S.C. 470a-1). In the case of properties owned or controlled by Federal, State, and/or local governments, a letter from the owner(s) would demonstrate concurrence. In the case of properties owned or controlled by private parties, the protection agreement outlined in § 73.13(c) would demonstrate concurrence. Any owner must concur before his/her property may be included within the World Heritage nomination. For example, concurrence from the

responsible management official for Federal property indicates concurrence for the management unit, but does not indicate concurrence of any non-Federal property interest located within its boundaries. Concurrence of any non-Federal property interest will be sought if that property interest is determined to be integral to the entire property's outstanding universal values. To be included within the World Heritage nomination, the owner of the non-Federal property interest would indicate concurrence by fulfilling the protection requirement outlined in § 73.13(c); and

(iii) The nomination document must include evidence of such legal protections as may be necessary to ensure the preservation of the property and its environment (16 U.S.C. 470a-1). The protection requirements for public and private properties are identified in § 73.13.

(2) *Process Initiation.* The Assistant Secretary, through the National Park Service (NPS), publishes a notice in the Federal Register in January of each year initiating the annual U.S. World Heritage nomination process. Among other things, this notice:

(i) Sets forth the annual schedule and procedures for identifying proposed U.S. nominations to the World Heritage List, including specific deadlines for receipt of suggestions and comments, and for preparing and approving nomination documents for properties so identified;

(ii) Includes the indicative inventory of potential future U.S. nominations to the World Heritage List, and solicits recommendations on properties on the inventory which should be nominated that year, or suggestions of additional properties that should be considered for inclusion on the inventory.

(iii) Identifies any special requirements that properties must satisfy to be considered for possible nomination.

(3) *Inventory.* The National Park Service compiles and maintains an indicative inventory of cultural and natural properties located within the U.S. that, based on preliminary examination, appear to qualify for World Heritage status and that may be considered for nomination to the World Heritage List. The inventory is a tentative list of properties that the U.S. may nominate at some point in the future. Inclusion of a property on the inventory does not confer World Heritage status on it, but merely indicates that a property may be further examined for possible nomination. Properties included on this inventory are drawn from suggestions received from any interested party and from the Department's own sources. The

inventory is used as the basis for selecting future U.S. nominations, and provides a comparative framework within which the outstanding universal value of a property may be judged. Proposed nominations are selected from among the potential future nominations included on the inventory. Any agency, organization, or individual may recommend additional properties, with accompanying documentation, that should be considered for inclusion on the inventory. Except in exceptional circumstances, a property must be listed on the indicative inventory before it can be considered for nomination. The Assistant Secretary, in cooperation with the Panel and other sources as appropriate, determines whether the recommended property should be included on the inventory. If approved for inclusion on the inventory, the property will be listed when the inventory is next published in the Federal Register. The Assistant Secretary transmits a copy of the inventory of potential future U.S. World Heritage nominations, including documentation on each property's location and significance, to the World Heritage Committee for use in its evaluation of nominations, as requested by Article 11(1) of the Convention.

(4) *Selection of Proposed Nominations.* After the January notice's comment period has expired, the National Park Service compiles all suggestions and comments received. Using the recommendations received and working in cooperation with the Federal Interagency Panel for World Heritage, the Assistant Secretary may identify properties as proposed U.S. nominations for a given year. In addition to how well the property satisfies the World Heritage criteria (§ 73.9) and the legislative requirements outlined in § 73(b)(1), considerations in the selection of proposed nominations may include:

(i) How well the particular type of property (i.e., theme or region) is already represented on the World Heritage List;

(ii) The balance between cultural and natural properties already included on the List and those currently under consideration;

(iii) The opportunities afforded by the property for public visitation, interpretation, and education;

(iv) Potential threats to the property's integrity or its current state of preservation; and

(v) Other relevant factors, including public interest and awareness of the property.

Selection of a property as a proposed nomination indicates that it appears to qualify for World Heritage status and that a detailed nomination document

will be prepared for the property. This document serves as the basis for making the decision to nominate the property to the World Heritage Committee (§ 73.7(e)).

(c) *Notification.* Following decisions on the proposed U.S. nominations, the Assistant Secretary publishes the results in the Federal Register. If properties are identified as proposed nominations, the Assistant Secretary notifies the following parties in writing:

(1) The owner(s) of lands or interests of land that are to be included in the nomination; and

(2) The Committee on Interior and Insular Affairs of the U.S. House of Representatives and the Committee on Energy and Natural Resources of the U.S. Senate.

The notice advises the recipients of the proposed action, references these rules, and sets forth the process that will be followed in preparing the nominations. The NPS prepares and issues a press release on the proposed nominations.

(d) *Nomination Preparation.* Following selection of proposed nomination(s), the NPS coordinates arrangements for the preparation of a detailed nomination document for each property. The owner(s) of the proposed property, in cooperation with NPS, is responsible for preparing draft nomination documents and for gathering necessary documentation in support of the nomination. The NPS oversees the nomination preparation process, and ensures that the procedural guidelines set forth by the World Heritage Committee and contained in these rules are satisfied. Each nomination is prepared according to the format and requirements established by the World Heritage Committee, and according to the schedule set forth in the annual January Federal Register notice (§ 73.7(b)(2)). In preparing nominations, consideration is given to including within their boundaries only those areas that appear to be of outstanding universal value to mankind.

(e) *Nomination Evaluation.* Following completion of the draft nomination document(s), the NPS coordinates their review and evaluation. The NPS distributes copies to all representatives on the Panel, with a request for comments regarding the adequacy of the nomination document and the significance of the property being nominated. The NPS compiles the recommendations and comments received from representatives on the Panel.

(f) *Nomination.* The Assistant Secretary, based on his/her evaluation and the recommendations of the Panel,

nominates properties which appear to possess outstanding universal value to the World Heritage Committee on behalf of the U.S. The Assistant Secretary transmits the nomination(s), through the Department of State, to UNESCO. The nomination(s) should be transmitted so that they are received by UNESCO prior to the January 1 deadline for any given year.

(g) *Notification.* When the nomination has been approved, as in paragraph (f) of this section, the Assistant Secretary publishes notice of this action in the Federal Register. In addition, the Assistant Secretary notifies the following parties, in writing, of the nomination(s):

(i) The owner(s) of land or interests in land that are included in the nomination; and

(ii) The Committee on Interior and Insular Affairs of the U.S. House of Representatives and the Committee on Energy and Natural Resources of the U.S. Senate.

The NPS prepares and issues a press release on the U.S. World Heritage nomination(s).

§ 73.9 World Heritage Criteria.

The World Heritage Committee uses the following criteria to evaluate the World Heritage potential of cultural and natural properties nominated to it:

(a) *Criteria for the Inclusion of Cultural Properties on the World Heritage List.* (1) A monument, group of buildings or site—as defined in Article I of the Convention—which is nominated for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

- (i) Represent a unique artistic achievement, a masterpiece of the creative genius; or
- (ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or
- (iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or
- (iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or
- (v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or
- (vi) Be directly or tangibly associated with events or with ideas or beliefs of

outstanding universal significance. (The Committee considered that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

(b) *Criteria for the Inclusion of Natural Properties on the World Heritage List.* (1) A natural heritage property—as defined in Article 2 of the Convention—which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) Be outstanding examples representing the major stages of the earth's evolutionary history. This category would include sites which represent the major "eras" of geological history such as "the age of reptiles" where the development of the planet's natural diversity can well be demonstrated and such as the "ice age" where early man and his environment underwent major changes; or

(ii) Be outstanding examples representing significant ongoing geological processes, biological evolution, and man's interaction with his natural environment; as distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities, of plants and animals, landforms, and marine and fresh water bodies; or

(iii) Contain superlative natural phenomena, formations or features or areas of exceptional natural beauty, such as superlative examples of the most important ecosystems, natural features, spectacles presented by great concentrations of animals, sweeping vistas covered by natural vegetation and exceptional combinations of natural and cultural elements; or

(iv) Contain the foremost natural habitats where threatened species of animals or plants of outstanding

universal value from the point of view of science or conservation still survive.

(2) In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The areas described in (b)(1)(i) of this section should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The areas described in (b)(1)(ii) of this section should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The areas described in (b)(1)(iii) of this section should contain those ecosystem components required for the continuity of the species or of the objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would be provided with control over siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The area containing threatened species as described in (b)(1)(iv) of this section should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. If such sites are located in other countries, the Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

§ 73.11 Federal Interagency Panel for World Heritage.

(a) *Responsibilities.* The Federal Interagency Panel for World Heritage is established to advise the Department of the Interior on implementation of the World Heritage Convention. Among other things, the panel assists in the following activities:

(1) The development of policy and procedures for effectively implementing the Convention in the U.S.;

(2) The evaluation of draft U.S. nomination documents;

(3) The making of recommendations for approval of U.S. nominations;

(4) The dissemination of information on the Convention within other Federal agencies; and

(5) The promotion of increased awareness and understanding of the importance of heritage conservation.

(b) *Composition.* (1) The Federal Interagency Panel for World Heritage is composed of representatives, named by their respective agencies, from the following agencies and offices:

(i) The Office of the Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior;

(ii) The National Park Service, U.S. Department of the Interior;

(iii) The U.S. Fish and Wildlife Service, U.S. Department of the Interior;

(iv) The President's Council on Environmental Quality;

(v) The Smithsonian Institution;

(vi) The Advisory Council on Historic Preservation;

(vii) The National Oceanic and Atmospheric Administration, Department of Commerce; and

(viii) The Department of State.

(2) Additional representatives from other Federal agencies with mandates and expertise in heritage conservation may be requested to participate in the Panel from time to time.

(3) The Assistant Secretary, or his/her designee, chairs the Panel, and sets its agenda and schedule. The NPS provides staff support to the Panel.

§ 73.13 Protection of U.S. World Heritage Properties.

(a) *Requirements.* (1) Article 5 of the Convention mandates that each participating nation shall take, insofar as possible, the appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, preservation, and rehabilitation of

properties of outstanding universal value; and

(2) Title IV of Pub. L. 96-515 requires that no non-Federal property may be nominated to the World Heritage List unless its owner concurs in writing to such nomination. The nomination document for each property must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment, including, for example, restrictive covenants, easements, and other forms of protection (16 U.S.C. 470a-1).

(b) *Protection Measures for Public Properties.* For properties owned or controlled by Federal, State, and/or local governments, the following items satisfy the protection requirements outlined in (a) above:

(1) Written concurrence by the owner prior to nomination;

(2) The nomination document must include reference to:

(i) All legislation establishing or preserving the area; and

(ii) All existing and proposed administrative measures, including management plans, that would ensure continued satisfactory maintenance of the property and its environment; and

(3) A written statement by the owner(s) that such protection measures satisfy the requirements outlined in (a) above.

(c) *Protection Measures for Private Properties.* For properties owned or controlled by private organizations or individuals, the following items satisfy the protection requirements outlined in (a) of this section.

(1) A written covenant executed by the owner(s) prohibiting, in perpetuity, any use that is not consistent with, or which threatens or damages the property's universally significant values, or other trust or legal arrangement that has that effect; and

(2) The opinion of counsel on the legal status and enforcement of such a prohibition, including, but not limited to, enforceability by the Federal government or by interested third parties.

In addition, if the owner(s) is willing, a right of first refusal may be given for acquisition of the property, along with a guaranteed source of funding and appropriate management framework, in the event of any proposed sale, succession, voluntary or involuntary

transfer, or in the unlikely event that the requirements outlined above prove to be inadequate to ensure the preservation of the property's outstanding universal value.

The protection measures for each private property being considered for possible nomination to the World Heritage List will be reviewed on a case-by-case basis to ensure that the requirements set forth above fulfill the mandate of Pub. L. 96-515.

§ 73.15 International World Heritage Activities.

(a) The Assistant Secretary, and other officials as appropriate, may represent the U.S. at meetings of the World Heritage Committee, the Bureau of the World Heritage Committee, or other international organizations or agencies which have activities that relate to World Heritage.

(b) In furtherance of Article 6 of the Convention and to the extent that resources permit, the Department will encourage and provide international assistance to other nations in activities relating to the identification, protection, conservation, and preservation of cultural and natural properties. The Secretary, or his designee, may develop and make available to other nations and international organizations training in, and information concerning, professional methods and techniques for the preservation of historic and natural properties (16 U.S.C. 470d; 16 U.S.C. 1537).

(c) NPS staff, in conjunction with the Federal Interagency Panel for World Heritage, provide support for the Assistant Secretary's international activities, including the preparation of documentation, briefing papers, and position statements.

(d) The Assistant Secretary responds, on behalf of the U.S., to requests from the World Heritage Committee, international heritage conservation organizations, or other nations regarding U.S. participation in the World Heritage Convention.

§ 73.17 Public Information and Education Activities.

(a) To the extent that time and resources permit, owners of U.S. properties approved for inclusion on the World Heritage List are encouraged to publicize the status of the property,

through appropriate signs, plaques, brochures, public dedication ceremonies, and interpretive displays or programs.

(b) The Department, through the NPS, may provide guidance to owners of U.S. World Heritage properties in developing publicity, educational, and/or interpretive programs.

(c) The NPS is responsible for developing and distributing general information materials on the World Heritage Convention, including brochures, slideshows, lectures, or other presentations in order to strengthen appreciation and understanding of the importance of World Heritage as set forth in Article 27 of the Convention.

Dated: April 15, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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Part VI

Department of Health and Human Services

Health Care Financing Administration

Survey and Certification of Health Care
Facilities

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405, 431, 442, 489, and 490

Medicare and Medicaid; Survey and Certification of Health Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rules.

SUMMARY: These regulations would simplify and streamline the procedures by which a health care facility is approved for participation in Medicare and Medicaid. The changes are necessary because many of the current procedures have proved cumbersome and expensive for the Federal and State agencies to administer, and, in many aspects, either unnecessary or ineffective in ensuring the quality of health care services. The elimination or modification of those requirements that have been identified as unnecessary or ineffective would also eliminate any unnecessary burdens on providers. The procedures that have proved effective in the past in protecting the health and safety of patients would be retained. This would permit available resources to be targeted on facilities with compliance problems.

These regulations also would implement a recent statutory amendment that removes the 12-month limit on provider agreement with skilled nursing facilities.

DATE: In order to ensure consideration, comments should be mailed by July 26, 1982.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to:

Health Care Financing Administration,
Room 309-G, Hubert Humphrey Bldg.,
200 Independence Ave., S.W.,
Washington, D.C.

or

Health Care Financing Administration,
Room 789, East High Rise Bldg., 6325
Security Boulevard, Baltimore,
Maryland.

In commenting, please refer to HSQ-502-P. Institutions and organizations are requested to send comments in duplicate. Comments will be available for public inspection beginning approximately two weeks from today, in room 309-G of our offices at 200 Independence Ave., S.W., Washington,

D.C. on Monday through Friday from 8:30 a.m. to 5 p.m. ((202) 245-7890).

FOR FURTHER INFORMATION CONTACT: Mark Bernsohn, (301) 594-7940.

SUPPLEMENTARY INFORMATION:

Background

The regulations that establish procedures for the survey and certification of health care facilities have been in effect since 1970 and have remained substantively unchanged since 1973. For Medicare, they apply to providers (hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) and suppliers (such as laboratories and portable x-ray suppliers). For Medicaid, they apply to the same types of providers and to intermediate care facilities (ICFs).

For Medicare, State survey agencies make recommendations to HCFA but HCFA makes the determination as to whether a provider or supplier qualifies for participation in the program. For providers and suppliers that participate or seek to participate in Medicaid, the State survey agency makes the determination. However, under section 1910 of the Social Security Act, and the Department's regulations (see, for example 42 CFR 440.70(d) for home health agencies), most providers and suppliers that are qualified for participation in the Medicare program automatically meet Federal eligibility requirements for the Medicaid program as well. (The State Medicaid agency is not obligated to enter into provider agreements with every facility or supplier that is Federally qualified.)

We have examined the requirements for the survey and certification process with a view to making it more flexible and easier to administer, while retaining the enforcement capabilities necessary to ensure the health and safety of Medicare and Medicaid beneficiaries.

In 1980, HCFA conducted public hearings in each of our regional offices and in Washington, D.C. on six of the proposals presented here (items 2 through 7). Based upon comments received during these hearings, and our own further analysis, we have identified some provisions that are duplicative and confusing, and others that are unduly burdensome for providers, difficult to enforce, and relatively ineffective in ensuring quality services. We propose to substantially modify these requirements, which deal with aspects such as staffing reports, 90-day follow-up visits, time-limited agreements, and automatic cancellation clauses. This will also allow the flexibility needed to administer the program effectively.

There is no change in the current provisions that prohibit issuance of a

provider agreement to a facility that has life-threatening deficiencies or that is otherwise not in compliance with a condition of participation. If life-threatening conditions or conditions that jeopardize patient health and safety are discovered in a survey, participation will be terminated.

We have also determined that certain provisions applicable to hospitals could be very effective if extended to other facilities. For example, the law and regulations already provide for acceptance of accreditation by the Joint Commission on Accreditation of Hospitals (JCAH) as a basis for deeming that a hospital meets the conditions of participation in Medicare and Medicaid. We believe that JCAH accreditation of SNFs, ICFs, and hospital-based HHAs could be also accepted if a State determines that to do so would be appropriate.

Finally, in accordance with section 2153 of Pub. L. 97-35 (the Omnibus Budget Reconciliation Act of 1981), we would remove the time limitation on agreement with SNFs. We would also extend that change to agreements with ICFs.

Specific Proposals

1. Consolidation of Medicare and Medicaid Survey and Certification Provisions.

We propose to consolidate Medicare and Medicaid survey and certification process requirements into a single part of 42 CFR Chapter IV. The current requirements for survey and certification of providers for participation in Medicare are found in 42 CFR Part 405, Subpart S. The requirements applicable under Medicaid are found in 42 CFR Part 442, Subpart C. This has caused continuing problems both for State survey agencies and for health care facilities. Requirements that are almost identical, but phrased differently, often give rise to problems of interpretation. We believe that a single set of procedural requirements will eliminate these problems.

2. Quarterly Staffing Reports.

The regulations at 42 CFR 405.1904(a) currently require all facilities to submit staffing reports routinely. We propose to modify the current policy and require those reports only when the State survey agency requests them because the facility has a history of staffing deficiencies, or was found not to meet all staffing requirements during its most recent certification survey. However, all facilities would now be required to have information about their staffing available when they are surveyed.

Currently all facilities are required to submit reports that set forth the average number and types of personnel on each tour of duty during at least one week of each quarter. The week is selected by the survey agency and differs from quarter to quarter. The survey agency is required to evaluate the reports and to take appropriate action when the reports indicate inadequate staffing. We believe this requirement is burdensome and not necessary with respect to facilities that generally maintain normal staffing levels, and that applying it to individual facilities on the basis of objective criteria, as stated above, will provide adequate safeguards. Having staffing information available at the time of the survey will permit routine monitoring of compliance with staffing requirements.

3. Mandatory 90-Day Resurveys.

We propose to eliminate the requirement that a facility approved for participation on the basis of a plan for correction of all deficiencies found at the time of survey be subject to a mandatory resurvey after 90 days. The regulations would be amended to require (a) followup at a time when correction or progress in correction can be assessed most realistically, and (b) an onsite visit only if there is no other way to verify correction of the deficiencies.

Currently, whenever a provider or supplier is certified on the basis of an acceptable plan of correction, the survey agency must conduct another onsite survey within 90 days to verify the corrective action is completed or progressing at a reasonable rate (42 CFR 405.1903). The purpose of this requirement was to ensure the correction of cited deficiencies.

Experience indicates that the 90-day resurvey seldom accomplishes its intended purpose of ensuring the correction of cited deficiencies. The 90-day period is arbitrary and does not take into consideration the individual nature of deficiencies or the specific plan of correction.

If the planned time for correction exceeds 90 days, an additional visit may be necessary at the time specified for correction. Thus, the requirement to resurvey in 90 days and again on the planned date of correction is mechanistic, unnecessary, and costly to both the facility and the State agency. It also precludes verification of correction by telephone or mail contact, even if appropriate.

Although we propose to eliminate the mandatory 90-day onsite resurvey, we would not eliminate the requirement for follow-up by the survey agency. The change would allow the agency to

resurvey when it can most effectively evaluate a facility's progress in effecting correction, and to use the verification method most appropriate and cost effective for the particular situation.

Of course, this procedure does not apply at all to life threatening deficiencies. When a provider is found to have life-threatening deficiencies, or to otherwise be out of compliance with the conditions of participation (as distinguished from individual correctable components of a condition of participation), procedures are initiated immediately to terminate the facility's participation.

4. Time-Limited Agreements.

We propose to eliminate the requirement that agreements with SNFs and ICFs be limited to a period not to exceed 12 months.

The 1972 amendments to the Social Security Act (Pub. L. 92-603) established the requirement that a Medicare provider agreement with a SNF could not exceed 12 months. The agreement could be extended for 2 additional months if doing so did not jeopardize the health and safety of patients. In order to have uniform procedures for both programs, the requirement for time-limited agreements was extended by regulation to SNFs and ICFs under Medicaid.

In 1981, Congress enacted section 2153 of Pub. L. 97-35 amending section 1886(a)(1) of the act to remove the 12-month limit on agreements with skilled nursing facilities. The law was changed because program experience since the inception of time-limited agreements has indicated that they are not necessary to ensure compliance with the conditions of participation. Moreover, the elimination of time-limited agreements represents a substantial reduction of paperwork and recordkeeping burdens since there will be no expiration dates to track and adjust for any extension granted.

Many facilities have established a record of consistent compliance with all conditions and do not need the frequent survey and oversight associated with a 12-month agreement. Other facilities, however, have established a record of marginal compliance and may need to be monitored more frequently. We believed that elimination of the uniform time restriction will allow the flexibility needed to manage the survey and certification process more effectively, to better ensure compliance, and to relieve states of a substantial paper-work burden.

5. Cancellation Clause Provisions.

We propose to eliminate the requirement that a SNF or ICF provider agreement, accepted on the basis of a

plan for correction of deficiencies, be automatically cancelled unless the deficiencies have been corrected by the predetermined date.

Both the existing regulations and those now being proposed provide that a facility that does not have life-threatening deficiencies and is in compliance with the relevant conditions of participation (although it has deficiencies in specific requirements within those conditions) may be approved for participation in Medicare or Medicaid if the facility establishes an acceptable plan to correct the deficiencies by a specified date. Current regulations also require that the provider agreement with a SNF or ICF that is participating with deficiencies be cancelled automatically no later than 60 days after the last day specified in the plan for correcting the deficiencies, unless the facility has corrected or made substantial progress toward correcting the deficiencies.

These cancellation provisions were established to ensure timely correction of all deficiencies. However, they have often proved ineffective, as well as costly and burdensome to administer. Because the automatic cancellation clause is applicable even when the deficiencies are minor, a substantial percentage of nursing homes is subject to automatic cancellation at any given time. Most facilities can show progress toward correcting the deficiencies within the required time frames. This means that the survey agency has to rescind the cancellation clause in over 90 percent of all cases; rescission usually requires an onsite visit, documentation, and preparation of new certification forms to continue participation. This represents a sizeable burden of questionable value. By eliminating the requirement for automatic cancellation, the proposal would permit survey agencies to tailor monitoring in accordance with the nature of the deficiencies to be corrected. For the small number of facilities that do not make adequate progress, other sanctions, such as termination, are available. Under the proposal, life-threatening deficiencies continue to be subject to immediate termination procedures.

6. Flexible Survey Cycle.

We propose to eliminate the requirement that all facilities be subject to annual surveys with the exception of ICFs for the mentally retarded (ICF/MR). Current regulations require the State agency to survey all providers and suppliers at least annually to ensure continued compliance with program requirements.

The impact of the survey requirement on quality of care has become questionable. Generally, we believe that annual surveys are a needless burden on the "good" facilities (those with excellent compliance records) as well as an inefficient use of human and fiscal resources to perform the survey. States that have many participants, a shortage of qualified personnel, or both, are finding it increasingly difficult to meet the requirement for annual visits to all facilities.

Our intent in eliminating mandatory annual surveys is to establish a more reasonable survey cycle of facilities based upon the facility's compliance history. Surveys would be required as often as necessary to ensure compliance. Facilities with a history of poor compliance would be surveyed more often than the existing regulations require. For facilities with a history of compliance without problems, the frequency may range up to three years for hospitals and up to two years for all other facilities, except ICFs/MR which must be surveyed at least annually. We believe the difference between hospitals and other facilities is justified by our experience which shows that hospitals generally have fewer deficiencies than other types of facilities and need less frequent monitoring. We propose to require at least annual surveys of ICFs/MR because we realize that most of the patients in these facilities (many of whom are children) lack the necessary experience or capability to bring quality of care problems to the attention of outside authorities. For this reason, we believe that annual surveys are necessary to ensure that monitoring officials detect any serious problems promptly.

7. Deemed Status for SNFs, ICFs (excluding ICFs for the Mentally Retarded), and HHAs Accredited by the Joint Commission on Accreditation of Hospitals (JCAH).

Under current regulations, hospitals accredited by the JCAH may be deemed to meet the conditions of participation in Medicare and Medicaid. We propose to extend this provision so that survey agencies may accept JCAH accreditation of SNFs, ICFs, and hospital-based HHAs as sufficient evidence that the facilities meet Federal health and safety requirements, and may participate in Medicare or Medicaid without an additional State agency survey. (Of course, ICFs do not participate in Medicare.) As a condition for "deemed status," the facility would be required to post its current JCAH report of the survey findings in a prominent place so that the public can

examine it. We would also provide that HCFA may revoke deemed status of JCAH-accredited facilities if it determines that accreditation no longer provides reasonable assurance that the facilities meet Federal requirements. HCFA would restore its acceptance of JCAH accreditation if the JCAH demonstrated that the problems leading to revocation had been corrected and were not likely to recur.

Under section 1865(a) of the Social Security Act, the Secretary may find that accreditation by a national accrediting organization provides reasonable assurance that the conditions of participation for SNFs and HHAs are met. Upon such a finding, the Secretary may, "to the extent he deems it appropriate," treat a provider as meeting the conditions of participation. Under section 1905(c) the Secretary is authorized to prescribe for ICFs "such standards * * * as he finds appropriate." As discussed below, we are familiar with the accrediting standards and procedures of the JCAH for SNFs, ICFs (except ICFs for the mentally retarded, which JCAH does not accredit), and hospital-based HHAs, and we believe that JCAH accreditation provides reasonable assurance that the applicable conditions have been met. Accordingly, we propose to accept JCAH accreditation in lieu of a State survey for SNFs and hospital-based HHAs that participate only in the Medicare program.

Although we considered this same approach for facilities participating in both Medicare and Medicaid, we have proposed that JCAH accreditation in lieu of a State survey be accepted only with State concurrence. Similarly, we would not compel States to use JCAH accreditation for ICFs and other facilities that participate in Medicaid but not in Medicare. States may believe that their own survey provides them with greater assurance that the conditions are met, or that other factors warrant the use of surveys by State agencies, rather than use of JCAH accreditation.

Accordingly, the proposed regulations would provide, with respect to facilities that participate in both programs or in Medicaid but not Medicare, that JCAH accreditation would be used only for those facilities, or types of facilities, for which State has accepted use of JCAH accreditation. For example, a State could accept JCAH accreditation for SNFs but continue to certify all ICFs through its own surveys. Or, a State could accept JCAH accreditation for particular SNFs (e.g. those with good

compliance records), while continuing to survey other facilities of the same type.

In view of this State option, the policies discussed below (on availability of JCAH survey information, validation surveys, and Federal requirements that are higher than JCAH accreditation standards), would apply to Medicaid only in those States that elect to make use of "deemed status" for particular facilities or types of facilities. Since we do not have a clear indication of the degree to which States will opt for JCAH accreditation, we are particularly interested in State, provider, and consumer reactions to this proposal as well as any cost benefit analysis of the proposal and its alternatives.

Availability of Survey Information

Section 1865(a)(2) of the Social Security Act mandates that JCAH release survey information on accredited hospitals to the Secretary (or the survey agency) upon request, on a confidential basis. The law does not protect the confidentiality of survey information on SNFs and HHAs. Since JCAH considers that its relationship with any surveyed facility requires that it keep survey reports confidential, the facility itself must make the decision to release that information. That is why we propose to make display of the survey report a condition for deemed status. We recognized that this is a sensitive area and particularly request comments from the public.

Results of Validation Surveys

We are proposing validation surveys for SNF, ICFs, and hospital-based HHAs approved on the basis of JCAH accreditation. This provision is currently applicable to hospitals. Validation of long-term care facilities and HHAs would be made on a selective-sample basis or in response to a substantial allegation of significant deficiencies.

If the validation survey found an accredited facility to be out of compliance with one or more of the conditions of participation for SNFs and HHAs or the standards for ICFs, HCFA or the State survey agency would promptly review the facility's status with the JCAH. If the JCAH agreed to accept the survey team's findings, to monitor the corrections against a specific timetable, and to provide periodic status reports, the JCAH would perform these duties unless the survey agency demonstrated to HCFA the need for its continued review. If JCAH did not accept the survey findings or agree to monitor and submit periodic status reports, (or the survey agency demonstrates the need for this) the

facility would be placed under full review of the State survey agency, to be surveyed in the same way as a facility not accredited by JCAH. The facility would have to submit to the survey agency a plan of correction that included an acceptable time frame for correcting the cited deficiency or deficiencies. In order to continue to participate in Medicare or Medicaid, the facility would have to demonstrate compliance with the respective conditions of participation or standards.

In summary, an accredited entity would be subject to full survey agency review only if it (1) refused to allow a validation survey; (2) was determined to have a "significant deficiency" after a validation survey; or (3) failed to authorize the release of periodic status reports regarding correction of deficiencies.

When HCFA, on the basis of survey agency recommendations, or the State survey agency in the case of ICFs, determined that the entity again met all the conditions of participation or standards, the entity would once again be deemed to meet the Federal requirements by virtue of its JCAH accreditation.

Higher Standards

A SNF, ICF, or HHA accredited by the JCAH would also have to meet any health and safety standard that we publish, if that standard was higher than the JCAH accreditation standards. If the Federal standards were subsequently revised so that they were higher than those prescribed by the JCAH or the JCAH changed any of its accreditation standards so that they were no longer equivalent to the corresponding conditions of participation or standards, HCFA will determine that that category of accredited facility would no longer be deemed to meet the higher Federal conditions or standards. In that case, those accredited entities would be surveyed to determine actual compliance with the higher conditions or standards. HCFA would consult with the JCAH before publishing higher health and safety standards and afford the JCAH the opportunity to adopt equivalent or higher standards as part of its own accreditation process.

Our decision to make the specific proposals outlined above was based on several factors.

In 1980-81 HCFA conducted an analysis and determined that the JCAH standards for SNFs, ICFs, and hospital-based HHAs are equivalent to the requirements set forth in 42 CFR Parts 405, 442, and 481 for participation in Medicare and Medicaid. HCFA also analyzed the JCAH decision-making

process and determined that it is adequate. Consequently, we are convinced that JCAH's accreditation is adequate to protect the health and safety of program beneficiaries.

We are committed to reducing burdens and unnecessary program expenditures while maintaining quality of care and safe conditions in health care facilities.

The number of SNFs, ICFs, and hospital-based HHAs accredited by the JCAH has increased steadily in the past 10 years. They now constitute about 10 percent of the SNFs and ICFs currently certified for Medicare and Medicaid and 13 percent of the HHAs certified for Medicare. Certification of these entities on the basis of JCAH accreditation would result in substantial staff savings. If all States were to accept JCAH accreditation, and the same number of entities continued to be accredited by JCAH, we estimate annual Federal savings would be in excess of \$1.9 million. A decrease in mandatory State agency survey activity would also permit more effective and efficient use of available resources, by allowing staff to concentrate on problem facilities and on conditions that adversely affect patient health and safety.

Impact Analysis

Executive Order 12291

Executive Order 12291 requires us to prepare a regulatory analysis for any rule that is likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on business or employment.

We have determined that these regulations will not have an impact of \$100 million or more or otherwise meet the tests of the Executive Order.

Regulatory Flexibility Act of 1980 (Pub. L. 96-354)

This Act requires us to prepare and publish a regulatory flexibility analysis (RFA) for any regulations that will have a significant adverse impact on a substantial number of small entities. For the reasons discussed below, we find that an RFA is not required for these regulations.

The savings to be achieved under a potentially longer survey cycle for facilities with a history of compliance without problems would benefit all providers.

Easing of the reporting burdens will be particularly welcome to small entities.

Response to Comments on Proposed Rules

Because we receive large numbers of comments, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments on this notice of proposed rulemaking and will respond to them in the preamble to the final regulations.

List of Subjects in 42 CFR Parts 405, 431, 442, 489, 490

Medicare, Medicaid, Health care facilities, Survey and certification.

REDESIGNATION TABLE FOR 42 CFR PART 405, SUBPART S

Subpart S, section—	Part 490, section—
405.1901(a).....	490.2.
405.1901(b).....	490.4(a).
405.1901(c).....	490.4(b).
405.1901(d).....	490.4(c).
405.1901(e)(1).....	490.18(a).
405.1901(e)(2).....	490.18(b).
405.1901(e)(3).....	490.18(c).
405.1901(e)(4).....	490.18(d).
405.1901(e)(5).....	490.18(e).
405.1901(e)(6).....	490.18(f).
405.1901(g).....	490.5.
405.1902(a).....	490.1(a).
405.1902(b).....	490.16(a).
405.1902(c).....	490.10.
405.1903(a), first sentence.....	490.15(a).
405.1903(a), remaining content.....	490.15(b).
405.1903(b).....	490.15(c).
405.1903(c).....	490.15(d).
405.1904(a) Deleted as inconsistent with changed policy.....	
405.1904(b)(1).....	490.10.
405.1904(b)(2).....	490.20(a)(1).
405.1904(b)(3).....	490.20(a)(2).
405.1904(b)(4).....	490.20(a)(3).
405.1904(c).....	490.16(d).
405.1905(a).....	490.12(c)(2).
405.1905(b).....	490.30(c).
405.1906.....	490.12(c)(1).
405.1907(a).....	490.34(a).
405.1907(b).....	490.34(b).
405.1908 Deleted as incompatible with current statute.....	
405.1909(a) Deleted as unrelated to the content of Part 490.....	
405.1909(b) Deleted as outdated (the section was published in 1974).....	
405.1909(c).....	490.50(a).
405.1909(d).....	490.50(b).
405.1910.....	To be redesignated later.
405.1911(a).....	490.56(a).
405.1911(b).....	490.56(b).
405.1912(a).....	490.58(a).
405.1912(b).....	490.58(b).
405.1912(c).....	490.58(a)(3).
405.1912(d) and (e).....	490.58(c).
405.1912(f) Deleted as outdated.....	
405.1913.....	490.60.

¹ There is no paragraph (f) in the regulations published Nov. 12, 1980.

42. CFR Chapter IV is amended as set forth below:

A. The table of contents for Chapter IV is amended to add a new Part 490 to read as follows:

Part

* * * * *

490 Medicare/Medicaid survey and certification procedures.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

B. In Part 405, Subpart S is removed and the table of contents is amended to reflect that change:

§§ 405.1901 through 405.1913 (Subpart S) [Removed]

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

C. In Part 431, § 431.610 is amended by revising paragraph (g)(1) to read as follows:

431.610 Relations with standard-setting and survey agencies.

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying skilled nursing and intermediate care facilities, the survey agency designated under paragraph (e) of this section will—

(1) Review and evaluate medical and independent professional review team reports obtained under Part 456 of this chapter as they relate to health and safety requirements:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

The authority statement for Part 441 reads as follows:

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302), unless otherwise noted.

D. In Subpart A of Part 441, § 441.15 is revised to read as follows:

§ 441.15 Home health services.

(a) A State plan must provide that—

(1) Home health services include, as a minimum—

(i) Nursing services;

(ii) Home health aide services; and

(iii) Medical supplies, equipment, and appliances;

(2) The agency provides home health services to—

(i) Categorically needy recipients age 21 or over;

(ii) Categorically needy recipients under age 21, if the plan provides skilled nursing facility services for them; and

(iii) Medically needy recipients to whom skilled nursing facility services are provided under the plan; and

(3) The eligibility of a recipient to receive home health services does not

depend on his need for or discharge from institutional care.

(b) A State plan may provide for acceptance of accreditation by the Joint Commission on Accreditation of Hospitals (JCAH) as indication that a hospital-based HHA meets the conditions of participation, in accordance with the same procedures as those set forth in § 442.102 of this chapter for SNFs and ICFs.

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

E. Part 442 is amended as set forth below:

1. The table of contents is revised to show the removal of §§ 442.15 and 442.16, the addition of a new § 442.102 and the removal of §§ 442.105, 442.110 and 442.111, and the correction of the titles of §§ 442.20, 442.112, and 442.113 and Subpart C.

Subpart A—General Provisions

Sec.

442.1 Basis and purpose.

442.1 Terms.

Subpart B—Provider Agreements

442.10 State plan requirement.

442.12 Provider agreement: General requirements.

442.13 Effective date of agreement.

442.14 Effect of change of ownership.

442.20 Additional requirements for agreements with SNFs participating in Medicare.

442.30 Agreement as evidence of certification.

Subpart C—Certification of SNFs and ICFs

442.100 State plan requirements.

442.101 Obtaining certification.

442.102 Accreditation of SNFs and ICFs by the Joint Commission on Accreditation of Hospitals.

442.112 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation and Life Safety Code deficiencies.

442.113 Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and living/dining/therapy area deficiencies.

442.115 Correction plans.

* * * * *

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§§ 442.15 and 442.16 [Removed]

2. Sections 442.15 and 442.16 are removed.

3. Section 442.20 is amended by revising the section title and paragraph (a) to read as follows:

§ 442.20 Additional requirements for agreements with SNFs participating in Medicare.

(a) The Medicaid agency's agreement with a SNF participating in Medicare must provide for meeting the terms and conditions that are imposed for that SNF's participation in Medicare.

4. A new § 442.102 is added, to read as follows:

§ 442.102 Accreditation of SNFs and ICFs by the Joint Commission on Accreditation of Hospitals.

(a) A State plan may provide for acceptance of JCAH accreditation of SNFs or ICFs (excluding ICFs for the mentally retarded) as indication that those facilities meet the conditions of participation, in accordance with § 490.6 of this chapter.

(b) If the State plan provides for acceptance of JCAH accreditation in accordance with paragraph (a) of this section—

(1) The State survey agency may certify an accredited facility as being in compliance, without conducting a certification survey; and

(2) Accredited facilities are subject to the validation requirements set forth in § 490.18 of this chapter.

§§ 442.105, 442.110 and 442.111 [Removed]

5. Sections 442.105, 442.110, and 442.111 are removed.

6. Section 442.112 is amended by revising paragraph (b) to read as follows:

§ 442.112 Extended period for correcting deficiencies: ICFs other than ICFs/MR; environment, sanitation, and Life Safety Code deficiencies.

(b) *Certification period.* The survey agency may certify an ICF even though the facility has deficiencies that may take up to 2 years after the first certification of the facility to correct, if the conditions in this section are met.

7. Section 442.113 is amended by revising paragraph (b) to read as follows:

§ 442.113 Extended period for correcting deficiencies: ICFs/MR; Life Safety Code and living/dining/therapy area deficiencies.

(b) *Certification period.* The survey agency may certify an ICF/MR even though the deficiencies listed in paragraph (a) of this section may take more than 12 months to correct, if the conditions in this section and § 442.115 are met.

* * * * *

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

The authority citation for Part 489 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 489.15 and 489.16 [Removed]

F. Part 489 is amended by removing § 489.15 and 489.16 and amending the table of contents to reflect these changes.

G. The content removed from Subpart S of Part 405 is revised and redesignated at a new Part 490, to read as follows:

PART 490—MEDICARE/MEDICAID SURVEY AND CERTIFICATION PROCEDURES**Subpart A—General Provisions**

Sec.

- 490.1 Basis and scope
- 490.2 Definitions.
- 490.4 Eligibility requirements.
- 490.5 Effect of JCAH or AOA accreditation.
- 490.6 Effect of JCAH accreditation of SNFs, ICFs and Hospital-based HHAs.

Subpart B—Role and Responsibilities of the State Survey Agency

- 490.10 State agency surveys: Basic rules.
- 490.12 State agency surveys: Documentation of findings.
- 490.16 State survey agency certification.
- 490.18 Validation surveys of accredited facilities.
- 490.20 Other survey agency responsibilities.

Subpart C—Determinations Regarding Participation in Medicare

- 490.30 Basic rules.
- 490.34 Providers and suppliers with deficiencies.

Subpart D—Determinations Regarding Participation in Medicaid

- 490.40 Basic rule.
- 490.42 SNFs or ICFs with deficiencies.

Subpart E—Miscellaneous

- 490.50 Special requirements applicable to independent laboratories.
- 490.56 Temporary waivers for SNFs.
- 490.58 Special procedures for approving ESRD facilities and the expansion of services in approved facilities.
- 490.60 Remote facility variances for utilization review requirements.

Authority: Sec. 1102, 1814, 1861, 1865, 1866, 1871, 1902(a)(33)(B) and 1910(a) of the Social Security Act (42 U.S.C. 1302, 1395 et seq.)

Subpart A—General Provisions**§ 490.1 Basis and scope.**

(a) *Statutory basis.* (1) Section 1864(a) of the Act requires the Secretary to enter into an agreement with any State that is able and willing to do so, under which appropriate State or local survey agencies will ascertain whether: (i)

Providers or prospective providers meet the Medicare conditions of participation;

(ii) Suppliers meet the conditions for coverage; and

(iii) Rural health clinics meet the conditions of certification.

(2) Section 1865(a) of the Act provides that: (i) An institution accredited as a hospital by the Joint Commission on Accreditation of Hospitals (JCAH) will be deemed to meet the conditions of participation, except those specified in § 490.4(c); and

(ii) If a hospital certified on the basis of JCAH accreditation is included in a validation survey, it must, in order to retain its deemed status, authorize the JCAH to release to the Secretary, upon request and on a confidential basis, a copy of the current JCAH accreditation survey.

(3) Section 1864(c) of the Act authorizes the Secretary to enter into agreements with State survey agencies to conduct validation surveys in hospitals accredited by the JCAH. Section 1865(b) provides that an accredited hospital which is found after a validation survey to have significant deficiencies related to the health and safety of patients will no longer be deemed to meet the conditions of participation.

(4) Section 1865(a) of the Act also provides that if the Secretary finds that accreditation of an institution or agency by the American Osteopathic Association (AOA) or any other national accreditation body provides reasonable assurance that any or all of the conditions of participation are met, the Secretary may treat the accredited institution as meeting the conditions of participation. The Secretary has found that the accreditation of hospitals by the AOA provides that reasonable assurance, and has extended the same procedures applicable to JCAH accredited hospitals to AOA accredited hospitals.

(5) Section 1902(a)(33)(B) of the Act specifies the agency that must perform survey agency functions for the Medicaid agency and section 1910(a) provides that a skilled nursing facility certified for participation in Medicare shall be deemed to meet the requirements for participation in Medicaid.

(b) *Scope.* This part sets forth the requirements and procedures for surveying providers and suppliers (as defined in § 490.2) that participate in Medicare or Medicaid, or both and for certifying whether those entities meet the conditions of participation.

§ 490.2 Definitions.

As used in this part, unless the context indicates otherwise—

"Accredited facility" means a hospital accredited by the Joint Commission on the Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA), or a SNF, ICF, or HHA accredited by the JCAH.

"Accredited HHA" means a hospital-based home health agency accredited by the JCAH.

"Accredited hospital" means a hospital accredited by the JCAH or the AOA.

"Accredited ICF" means an ICF accredited by the JCAH as a long-term care facility.

"Accredited SNF" means a SNF accredited by the JCAH as a long-term care facility.

"Certification for Medicare" means a recommendation made by the State survey agency on the compliance of providers and suppliers with the conditions of participation and conditions of coverage.

"Certification for Medicaid" means the survey agency's determination regarding a Medicaid provider's compliance with health and safety requirements.

"Conditions of participation coverage" means broad clusters of requirements that define minimum health and safety standards that providers and suppliers must meet.

"Full review" means a survey of a hospital, HHA, SNF or ICF to determine compliance with the applicable conditions of participation for hospitals, SNFs, and HHAs or the standards for ICFs.

"Hospital-based HHA" means an HHA that is accredited by the JCAH as part of a hospital.

Provider means a hospital, skilled nursing facility, home health agency, provider of outpatient physical therapy or speech pathology services a comprehensive outpatient rehabilitation facility, or, for Medicaid, an ICF.

"State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Pacific Trust Territories.

"State survey agency" means the State health agency or other appropriate State or local agency used to perform survey and review functions for Medicare and Medicaid.

"Substantial allegation" means a complaint that pertains to the health and safety of patients and raises doubts as to whether a facility is in compliance with the conditions of participation for a

hospital, SNF, or HHA, or the standards for ICF participation.

"Supplier" means any of the following: independent laboratory; portable X-ray services; ESRD ambulatory surgical center; or rural health clinics.

§ 490.4 Eligibility requirements.

(a) *Conditions of Participation:* Conditions for coverage. In order to be approved for participation in or coverage under the Medicare or Medicaid program, a prospective provider or supplier must: (1) Meet the applicable statutory definition in section 1861 or section 1861 of the Act;

(2) Be in compliance with the applicable conditions of participation or coverage set forth elsewhere in this chapter; and

(3) Be in compliance with the applicable standards for ICFs set forth in Subparts D, E, F, and G of Part 442 of this chapter.

(b) *Special conditions.* (1) HCFA may, after consultation with the JCAH or AOA, issue SNFs, or HHAs, or standards for ICFs that are conditions of participation for hospitals higher or more precise than those of either accrediting body.

(2) HCFA may, at a State's request, approve health and safety requirements for providers and suppliers in that State, which are higher than those otherwise applied in the Medicare program.

(3) If a State or political subdivision imposes higher requirements on institutions as a condition for the purchase of health services under a State Medicaid plan approved under Title XIX of the Act, HCFA is required to impose similar requirements as a condition for payment under Medicare in that State or political subdivision.

(c) *Civil rights requirements.* Providers must meet the requirements of: (1) Title VI of the Civil Rights Act of 1964, as implemented by 45 CFR Part 80, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be subject to discrimination under, any program or activity receiving Federal financial assistance (Section 601);

(2) Section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR Part 84, which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance; and

(3) Other pertinent requirements made by the Office of Civil Rights of the Department of Health and Human Services.

(4) Section 405.1902 is revised to read as follows:

§ 490.5 Effect of JCAH or AOA accreditation of hospitals.

Hospitals accredited as hospitals by the JCAH or AOA are deemed to meet all of the Medicare conditions of participation for hospitals except the following requirements that are set forth elsewhere in this chapter: (a) The requirement for utilization review.

(b) The additional special staffing and medical records requirements for the provision of active treatment in psychiatric and tuberculosis hospitals; and

(c) Any requirement that HCFA, after consulting with JCAH or AOA, identifies as being higher or more precise than the requirements for accreditation.

§ 490.6 Effect of JCAH accreditation of DNFs, ICFs and hospital-based HHAs.

(a) *Scope.* (1) This section sets forth the requirements for acceptance of JCAH accreditation as evidence that a SNF, ICF (except and ICF for the mentally retarded), or hospital-based HHA meets the conditions of participation.

(2) The provisions of paragraphs (c) through (e) of this section do not apply to facilities that participate in both Medicaid and Medicare, or in Medicaid only, unless the State has agreed to accept JCAH accreditation in accordance with paragraph (b) of this section.

(3) For purposes of this section, "conditions of participation" includes standards of participation for ICFs.

(b) *State option.* (1) For facilities that participate in both Medicare and Medicaid, or in Medicaid only, the State has the option of accepting JCAH accreditation of any or all of the three types of facilities identified in paragraph (a)(1) of this section, or of accepting JCAH accreditation with respect to particular facilities that meet criteria established by the State.

(2) The extent to which the State will accept JCAH accreditation must be set forth in the State Medicaid plan in accordance with § 441.15(b) or § 442.102 of this chapter.

(c) *Granting of deemed status.* A SNF, ICF, or hospital-based HHA that is accredited by the JCAH, and prominently displays the report of the current JCAH survey findings, will be deemed to meet all conditions of participation except those that HCFA, after consultation with JCAH, identifies

as being higher or more precise than the requirements for accreditation.

(d) *Revocation of deemed status.* If HCFA determines that JCAH accreditation no longer ensures that accredited SNFs, ICFs, or hospital-based HHAs meet all conditions or participation—

(1) It will revoke deemed status for all facilities of that type; and

(2) Give the JCAH an opportunity to show that the problems that led to revocation of deemed status have been corrected.

(e) *Reinstatement of deemed status.* If the JCAH shows, to HCFA's satisfaction, that the problems have been corrected and are not likely to recur, HCFA will restore deemed status for the particular type of facility.

Subpart B—Role and Responsibilities of the State Survey Agency

§ 490.10 State agency surveys: Basic rules.

(a) *Primary responsibility.* (1) The primary responsibility of State survey agencies is to ascertain whether providers and suppliers meet, or continue to meet, program requirements.

(2) The survey agency is relieved of responsibility for utilization review in facilities that are under review by a Professional Standards Review Organization (PSRO) in accordance with section 1155(a) of the Act and Part 463 of this chapter.

(b) *Frequency of survey.* State survey agencies will survey providers and suppliers as often as necessary to ensure compliance. They will survey ICFs for the mentally retarded at least every year, hospitals at least every three years, and all other providers and suppliers at least every two years. If a facility has a poor compliance history, they will, as necessary to ensure compliance, survey more often than annually.

(c) *Determining compliance.* (1) The decision as to whether there is compliance with a particular condition of participation or conditions for coverage will depend upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's performance against these standards will enable the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(2) The State survey agency will certify that a provider or supplier is not or is no longer in compliance with the

conditions of participation or conditions for coverage if the deficiencies are of such character as to substantially limit the provider's or supplier's capacity to furnish adequate care or which adversely affect the health and safety of patients.

§ 490.12 State agency surveys: Documentation of findings.

(a) *Basic rule.* The findings of the State survey agency with respect to each of the conditions of participation or conditions for coverage or standards must be adequately documented.

(b) *Documentation of a finding of noncompliance.* If the State survey agency certifies that a provider or supplier is not in compliance with the conditions or standards, and therefore not eligible to participate in the program, the documentation must include, in addition to the description of the specific deficiencies that resulted in the agency's recommendation—

(1) A report of all consultation undertaken in an effort to assist the provider or supplier to comply with the conditions or standards;

(2) A report of the provider's or supplier's responses with respect to the consultation; and

(3) The agency's assessment of the prospects for improvements that would enable the provider or supplier to achieve compliance with the conditions or standards within a reasonable period of time as specified in § 490.34(b).

(c) *Documentation of certification with deficiencies.* If the survey agency certifies compliance for a provider or supplier with deficiencies, the following information must be incorporated into the findings:

(1) A statement of the deficiencies that were found;

(2) A description of further action required to remove the deficiencies; and

(3) A time-phased plan of correction developed by the provider and supplier and concurred with by the survey agency.

The requirements of this paragraph (c) also apply when a SNF that has a waiver under § 490.56 has deficiencies with respect to a requirement that is not waived, or an ESRD facility that is approved as complying with minimal utilization rates (under § 490.58) has deficiencies in other requirements for coverage of its services.

(d) *Notice of eligibility to participate with deficiencies or under waiver.* (1) If the survey agency certifies compliance on the basis of an acceptable plan for correction of deficiencies, the notice will include the information specified in paragraph (c) of this section.

(2) If HCFA has granted a waiver under § 490.56, the notice will include the information required as a basis for granting the waiver.

(3) If HCFA has approved an ESRD facility under § 490.58 as complying with the minimal utilization rates, the notice will include the information on which approval was based.

(e) *Use of onsite follow-up survey.* The State survey agency will make an onsite follow-up survey when—

(1) HCFA or the survey agency finds it necessary to reexamine a facility's eligibility for waiver or for approval as meeting the ESRD utilization rates.

(2) HCFA or the survey agency finds it necessary to verify onsite the correction of deficiencies.

§ 490.16 State survey agency certification.

(a) *Effect of survey agency certification.* (1) For Medicare, certifications by the State survey agency constitute recommendations to HCFA.

(2) For Medicaid, survey agency certifications constitute determinations of compliance or noncompliance with health and safety requirements. (The decision on participation in the program is made by the Medicaid agency.)

(b) *Action by HCFA or State survey agency.* On the basis of survey agency certifications, HCFA (for Medicare) or the State survey agency (for Medicaid) determines—

(1) Whether the provider or supplier is eligible to participate in Medicare or Medicaid; and

(2) Whether an accredited hospital, SNF, ICF, or HHA is deemed to meet the conditions of or standards for participation or is subject to full review by the State survey agency.

(c) *Notice to provider or supplier.* HCFA or the Medicaid agency will notify the provider or supplier of its determination under paragraph (b) of this section.

(d) A State survey agency certification that a provider or supplier is no longer in compliance with the conditions of participation or conditions for coverage will supersede the State survey agency's previous certification.

§ 490.18 Validation surveys of accredited facilities.

(a) *Basis for survey.* HCFA may require a survey of an accredited facility to validate the JCAH or AOA accreditation process. These surveys will be conducted on a selective-sample basis, or in response to substantial allegations of significant deficiencies.

(b) *Effect of selection for survey: Hospitals.* A hospital selected for a validation survey must: (1) Authorize its accrediting body to release to HCFA

or the state survey agency (on a confidential basis for JCAH hospitals), a copy of the hospital's current accreditation survey.

(2) Authorize carrying out the validation survey; and

(3) Authorize its accrediting body to release periodic status reports to HCFA or the State survey agency on correction of deficiencies when HCFA and the accrediting body agree that the latter will monitor the correction of deficiencies.

(c) *Effect of selection for survey: SNFs, ICFs, and HHAs.* A SNF, ICF, or HHA selected for a validation survey must comply with the requirements of paragraphs (b)(2) and (b)(3) of this section.

(d) *Refusal to cooperate with survey.* If a facility selected for a validation survey fails to comply with the requirements specified in paragraphs (b) and (c) of this section, it will no longer be deemed to meet the conditions of participation but will be subject to full review by the State survey agency in accordance with paragraph (e) of this section and may be subject to termination of its provider agreement. (For purposes of this section, "conditions of participation" includes standards of participation for ICFs.)

(e) *Consequences of finding of noncompliance.* (1) If a validation survey results in a finding that the facility is out of compliance with one or more conditions of participation and a significant deficiency is determined to exist, the facility will no longer be deemed to meet the conditions of participations. (2) Specifically, the facility will be subject to the conditions that apply to unaccredited facilities that are found out of compliance following a State agency survey, as set forth in § 490.34, and to full review by the State survey agency.

(3) A significant deficiency will be determined not to exist if:

(i) The accrediting body accepts the State survey agency finding of deficiencies and agrees to monitor the correction of the deficiencies in accordance with specified time frames;

(ii) The State survey agency is unable to justify to HCFA the need for continued full review by the State survey agency to assure correction of deficiencies; and

(iii) The accrediting body provides HCFA or the State survey agency with periodic reports of progress in correcting deficiencies.

(f) *Reinstatement of deemed status: Hospitals.* An accredited hospital will be once again deemed to meet the Medicare conditions of participation in

accordance with § 490.4 if—(1) It withdraws any prior refusal to authorize its accrediting body to release a copy of the hospital's current accreditation survey;

(2) It withdraws any prior refusal to allow a validation survey;

(3) It withdraws any prior refusal to authorize its accrediting body to release periodic status reports on correction progress; and

(4) HCFA finds that the hospital meets all the Medicare conditions of participation.

(g) *Reinstatement of deemed status: SNFs, ICFs, and HHAs.* An accredited SNF, ICF, or HHA will once again be deemed to meet the conditions of participation if—

(1) The facility complies with the requirements of paragraphs (f)(2) and (f)(3) of this section; and

(2) HCFA or the survey agency finds that the facility meets the condition of participation.

(h) *Informal administrative review.* (1) An accredited facility participating in the Medicare program that is dissatisfied with a finding that it is not in compliance with a condition of participation, or a finding that it is no longer deemed to meet the conditions of participation, is entitled to an informal administrative review under Part 405, Subpart O, of this chapter.

(2) The facility must request informal review in writing within 15 days of the date it received HCFA's notice of the finding.

(3) The request must state why the finding is considered incorrect and should be accompanied by any supporting evidence and arguments.

§ 490.20 Other survey agency responsibilities.

(a) *Specify activities.* State survey agencies must (1) Review reports prepared by a Professional Standards Review Organization (authorized under Part B Title XI of the Act) or a State inspection of care team (authorized under Title XIX of the Act) regarding the quality of a facility's care;

(2) Evaluate reports that may pertain to the health and safety of patients; and

(3) Take appropriate actions that may be necessary to achieve compliance or certify noncompliance to HCFA.

(b) *Requirements for staffing information.* (1) The survey agency must require all facilities to have staffing information available at the time of survey.

(2) If a facility has a history of staffing deficiencies or achieved only marginal compliance with staffing requirements during the last on-site survey—

(i) The survey agency must require the facility to submit statements showing, on the basis of payment records, the numbers and types of personnel (in full-time equivalents) on each tour of duty; and

(ii) The statements must be submitted as often as necessary to ensure compliance and must be for periods selected by the survey agency.

Subpart C—Determinations Regarding Participation in Medicare

§ 490.30 Basic rules.

(a) HCFA will use survey agency certifications in determining whether an institution or agency is qualified to participate in Medicare.

(b) If HCFA determines that an institution or agency meets the conditions of participation, that institution or agency may file a provider agreement which, if accepted by HCFA, makes the entity eligible for Medicare reimbursement. (For suppliers, HCFA's notice that the entity is approved to participate in Medicare is all that is necessary to qualify for reimbursement.)

(c) If HCFA determines that an institution or agency does not qualify for participation or coverage because it is not in compliance with the conditions of participation or condition for coverage, or if a provider's agreement is terminated for that reason, the institution or agency has the right to request that the determination be reviewed in accordance with Part 405, Subpart O, of this chapter.

§ 490.34 Providers and suppliers with deficiencies.

(a) *Conditions for participation.* A provider or supplier that is found to be deficient with respect to one or more of the standards within their respective conditions of participation or conditions for coverage may participate in Medicare only if—

(1) It has submitted a plan of correction, acceptable to HCFA, for achieving compliance within a reasonable period of time; and

(2) The existing deficiencies, either individually or in combination, neither jeopardize the health and safety of patients nor are of such character as to seriously limit the entity's capacity to furnish adequate care.

(b) *Time allowed for correction of deficiencies.* (1) If a state survey agency determines, during a survey, that a provider or supplier is not in compliance with one or more of the standards, it will grant a reasonable time for the provider or supplier to achieve compliance.

(2) The amount of time will depend upon the nature of the deficiency and

the survey agency's judgment as to the capabilities of the facility to provide adequate and safe care. The amount of time allowed is subject to approval by HCFA.

(3) Ordinarily a provider or supplier will be expected to achieve compliance within 60 days of being notified of the deficiencies. However, the survey agency may recommend that additional time be granted by HCFA in individual situations, if in its judgment it is not reasonable to expect compliance within 60 days, for example, because a facility must obtain the approval of its governing body, or engage in competitive bidding.

(c) *Termination.* If the existing deficiencies, either individually or in combination, jeopardize the health and safety of patients or are of such character as to limit seriously the entity's capacity to furnish adequate care, the facility is not eligible to submit a plan of correction or to continue to participate in Medicare. HCFA will terminate its provider agreements in accordance with § 489.53 of this chapter.

Subpart D—Determinations Regarding Participation in Medicaid

§ 490.40 Basic rule.

A Medicaid agency must obtain notice of certification of a SNF or ICF as provided in § 442.101 of this chapter before executing a provider agreement.

§ 490.42 SNFs or ICFs with deficiencies.

(a) *Requirements for certification.* A survey agency may certify for Medicaid participation a SNF or ICF that is found deficient in meeting the standards of Part 442, Subparts D, E, F, or G only if—

(1) The facility has submitted a plan of correction, acceptable to the survey agency, for achieving compliance within a reasonable period of time; and

(2) The existing deficiencies, either individually or in combination, neither jeopardize the health and safety of patients nor are of such character as to seriously limit the entity's capacity to furnish adequate care.

(b) *Normal time allowed for correction of deficiencies.* (1) A survey agency will grant a reasonable time for a facility to achieve compliance.

(2) The amount of time will depend on the nature of the deficiency and the survey agency's judgment as to the capabilities of the facility to provide adequate and safe care.

(3) Ordinarily a facility will be expected to achieve compliance within 60 days of being notified of the deficiencies. However, the agency may grant additional time in individual

situations, if in its judgment it is not reasonable to expect compliance within 60 days, for example, because a facility must obtain the approval of its governing body, or engage in competitive bidding. (Special provisions for correction of deficiencies in ICFs and ICFs/MR are set forth in §§ 442.112, 442.113, 442.115 of this chapter.)

(c) *Termination.* If the existing deficiencies, either individually or in combination, jeopardize the health and safety of patients or are of such character as to limit seriously the entity's capacity to furnish adequate care, the facility is not eligible to continue to participate in Medicaid. The Medicaid agency must terminate the provider's participation.

Subpart E—Miscellaneous Provisions

§ 490.50 Special requirements applicable to independent laboratories.

(a) An independent laboratory that has had its previous approval revoked, totally or for a specialty or subspecialty, because of unsatisfactory performance in proficiency testing, may subsequently be certified by the state survey agency and determined by HCFA to be in compliance with the conditions for coverage if—

(1) After a 6-month period, an appraisal of the laboratory's performance in a proficiency testing program, as defined in § 405.1311(c) reflects satisfactory test results on at least two sets of specimens, or

(2) After a 3-month period, the State agency's assessment of the laboratory's performance in examining proficiency test samples, analyzed during at least two State agency onsite visits, establishes the laboratory's competency.

(b) A laboratory that meets the requirements of § 490.34 or paragraph (a) of this section may continue to be certified by the State agency and determined by HCFA to be in compliance with these conditions if it—

(1) Promptly reports any change in ownership, location, directors, or supervisors; and (2) permits a State survey agency to conduct an onsite visit or survey at any time during the laboratory's regular hours of operations.

§ 490.56 Temporary waivers for SNFs.

(a) *Waiver of 7-day registered nurse requirement.* A temporary waiver of the requirement that a SNF have a registered nurse on duty at least during the day tour 7 days a week may be granted if the documented findings of the State survey agency show that the facility—

(1) Is located in a rural area where the supply of skilled nursing facility services

is not sufficient to meet the needs of the area's residents;

(2) Has at least one fulltime registered nurse who is regularly on duty at the facility 40 hours a week;

(3) Either (i) Has only patients whose attending physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse for a 48-hour period, or (ii) Has made arrangements for a registered nurse or a physician to spend such time at the facility as is determined necessary by the patient's attending physician to provide necessary services on days when the regular full-time registered nurse is not on duty; and

(4) Has made and continues to make a good faith effort to comply with the more than 40-hour registered nurse requirement, but is unable to meet the requirement because of the unavailability of registered nurses in the area.

(b) *Waiver of medical director requirement.* A temporary waiver of the requirement that a SNF have a full-time or part-time medical director may be granted if the documented findings of the survey agency show that the facility—

(1) Is located in an area where the supply of physicians is not sufficient to permit compliance with this requirement without seriously reducing the availability of physician services within the area, and

(2) Has made and continues to make a good faith effort to comply with the requirement but is unable to do so because of the unavailability of physicians in the area.

§ 490.58 Special procedures for approving end-stage renal disease facilities and the expansion of services in approved facilities.

(a) Factors that will be considered. (1) The condition for coverage of ESRD services are set forth in Part 405, Subpart U of this chapter. A major criterion is the utilization rate.

(2) If an ESRD facility requests approval for coverage of its services or for expansion of renal dialysis services, the following will be considered:

(i) The State survey agency's certification.

(ii) Information and recommendations from ESRD network organizations and the Public Health Service concerning the facility's contribution of the furnishing of ESRD services.

(iii) Services in its network area.

(3) Information submitted by the facility concerning its qualifications for approval.

A facility that has not previously participated in the ESRD program must submit a plan detailing how it expects to meet the conditional minimal utilization rate status by the conclusion of 1 calendar year of its operation under the program and meet the unconditional minimal utilization rate status during the third calendar year of its operation under the program.

(b) *Determining compliance with minimal utilization rates: Time limitations—(1) Unconditional status.* A facility that meets minimal utilization requirements will be assigned this status as long as it continues to meet these requirements.

(2) *Conditional status.* A conditional status may be granted to a facility for not more than 2 consecutive calendar years and will not be renewable. Its status may be examined each calendar year to ascertain its compliance with this requirement.

(3) *Exception status.* Under unusual circumstances as specified in § 405.2122(c) of this chapter, HCFA may grant a time-limited exception to a facility that is not in compliance with the minimal utilization rate for either unconditional status or conditional status. This exception status may be granted, and may be renewed on an annual basis, if rigid application of minimal utilization rate requirements would adversely affect the achievement of ESRD program objectives.

(c) *Notification.* HCFA will notify each facility and its network coordinating council of its initial and its subsequent minimal utilization rate classification and of any failure to meet standards for unconditional status or conditional status, or if applicable, for exception status.

§ 490.60 Remote facility variances for Medicare-utilization review requirements.

(a) *Applicability.* This section applies to facilities participating in the Medicare program. Comparable requirements for Medicaid facilities are set forth in Part 456, Subpart H, of this chapter.

(b) As used in this section:

(1) An "available" individual is one who:

(i) Possesses the necessary professional qualifications;

(ii) Is not precluded from participating by reason of financial interest in any such facility or direct responsibility for the care of the patients being reviewed or, in the case of a skilled nursing facility, employment by the facility; and

(iii) Is not precluded from effective participation by the distance between the facility and his residence, office, or other place of work. An individual

whose residence, office, or other place of work is more than approximately one hour's travel time from the facility shall be considered precluded from effective participation.

(2) "Adjacent facility" means a health care facility means a health care facility located within a 50-mile radius of the facility which requests a variance.

(c) HCFA may grant a variance from the applicable time frames within which utilization reviews of all cases must be begun and completed, as set forth in the conditions of participation for hospitals and for SNFs, if the facility shows, to HCFA's satisfaction, that it was unable to comply with one or more of the requirements because sufficient medical and other professional personnel were not available to conduct the utilization reviews.

(d) The request for variance must—(1) Document the requesting facility's inability to meet the requirements for which a variance is requested and the facility's good faith efforts to comply with the applicable requirements; (2) Include an assurance by the requesting facility that it will continue its good faith efforts to meet the applicable requirements; and (3) Be accompanied by a revised utilization review plan that specifies the methods and procedures which the requesting facility will use, if a variance is granted, to ensure:

(i) That effective and timely control will be maintained over the utilization of services; and

(ii) That reviews will be conducted so as to improve the quality of care provided to patients.

(e) The request for a variance must include:

(1) The name, location, and type (e.g., hospital, skilled nursing facility) of the facility for which variance is requested;

(2) The total number of patient admissions and average daily patient census at the facility within the previous six months;

(3) The total number of title XVIII and title XIX patient admissions and the average daily patient census of title XVIII and title XIX patients in the facility within the previous six months;

(4) As relevant to the request, the names of all physicians on the active staff of the facility and the names of all other professional personnel on the staff of the facility, or both;

(5) The name, location, and type of each adjacent facility (e.g., hospital, skilled nursing facility);

(6) The distance and average travel time between the facility and each adjacent facility;

(7) As relevant to the request, the location of practice of available physicians and the estimated number of other available professional personnel, or both;

(8) Documentation by the facility of its attempt to obtain the services of available physicians or other professional personnel, or both; and

(9) A statement of whether a planning or conditional Professional Standards Review Organization (PSRO) exists in the area where the facility is located.

(f) HCFA will promptly notify the facility of the action taken on the request. While a variance is in effect, the validation of utilization review will be made with reference to the revised utilization review plan submitted with the request for variance.

(g) HCFA will specify the period for which it grants a variance; that period will not exceed one year. A request for a renewal must be submitted not later than 30 days before expiration of the variance and must contain all information required by paragraphs (c) and (e) of this section. Renewal of the variance will be contingent upon the facility's continuing to meet the provisions of this section.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; No. 13.773 Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 6, 1982.

Carolyn K. Davis,
Administrator, Health Care Financing
Administration.

Approved: April 9, 1982.

Richard S. Schweiker,
Secretary.

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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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DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
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Last Listing May 25, 1982

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H.R. 2863 / Pub. L. 97-179 To authorize the Secretary of Agriculture to sell the portion of the Tahoe National Forest known as Blyth Arena. (May 24, 1982; 96 Stat. 90) Price: \$1.75.

S. 691 / Pub. L. 97-180 Piracy and Counterfeiting Amendments Act of 1982 (May 24, 1982; 96 Stat. 91) Price: \$1.75.

H.J. Res. 361 / Pub. L. 97-181 To grant official recognition to the international ballet competition. (May 24, 1982; 96 Stat. 94) Price: \$1.75.

S.J. Res. 170 / Pub. L. 97-182 To designate the week of November 7, 1982, through November 14, 1982, as "National Hospice Week". (May 24, 1982; 96 Stat. 95) Price: \$1.75.

S.J. Res. 145 / Pub. L. 97-183 Authorizing and requesting the President to proclaim "National Orchestra Week". (May 24, 1982; 96 Stat. 97) Price: \$1.75.

S. 146 / Pub. L. 97-184 To authorize the Secretary of the Interior to assist in the preservation of historic Camden in the State of South Carolina, and for other purposes. (May 24, 1982; 96 Stat. 99) Price: \$1.75.

H.R. 6038 / Pub. L. 97-185 To amend section 235 of the National Housing Act. (May 24, 1982; 96 Stat. 100) Price: \$1.75.

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