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Tuesday
October 12, 1982

Selected Subjects

Administrative Practice and Procedure
Securities and Exchange Commission

Agricultural Research
Agricultural Marketing Service

Air Pollution Control
Environmental Protection Agency

Air Transportation
Federal Aviation Administration

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Reserve System

Buses
Urban Mass Transportation Administration

Cable Television
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Coal Mining
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Communications Common Carriers
Federal Communications Commission

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Regulations for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises certain sections of the regulations governing the grading and certification of meats, prepared meats, and meat products by changing the basis for collecting fees on Federal legal holidays from establishments using Federal grading and certification services. This change will make charges for Federal grading and certification more equitable among all users of the service without imposing additional costs to the industry and without significantly affecting program revenue.

EFFECTIVE DATE: November 14, 1982.

FOR FURTHER INFORMATION CONTACT: David K. Hallett, Chief, Meat Grading and Certification Branch; Livestock, Meat, Grain, and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture; Room M–1, Annex Building; Washington, D.C. 20250, 202/382–1246.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under U.S. Department of Agriculture procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to section 1(b) (1), (2), and (3) of that order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*). Vern F. Highley, Administrator, Agricultural Marketing Service, determined that this rule will not have a significant adverse economic impact on a substantial number of small entities. The rule merely makes the industry's cost of using Federal meat grading and certification services more equitable among all plants using the services without imposing additional costs on the industry.

Background

The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meats and meat products and to enable consumers to obtain the quality of meat which they desire. It also provides for the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees for services include salary and fringe benefit expenses and the cost of supervision, travel, training, and other administrative and overhead costs.

The Department uses two methods of charging hourly fees for meat grading and certification services to ensure that the costs of providing services are recovered. Establishments located in areas where meat graders are assured of being utilized a minimum of 8 hours per day, Monday through Friday, are charged on an hourly, noncommitment basis. As such, these establishments pay only for the hours they actually utilize a meat grader and are not required to pay any charges on Federal legal holidays when grading and certification services are not provided.

Alternatively, in locations where insufficient work exists to justify stationing a permanent grader in the area, the Department arranges for an establishment or group of establishments to enter into a 40-hour commitment agreement for grading and certification services. Under a commitment agreement, the establishments guarantee a minimum payment for 8 hours of service per day, Monday through Friday, even if the meat grader is not utilized for the full 40 hours per week. This minimum payment includes 8 hours on any Federal legal holiday occurring Monday through Friday, even if the meat grader does not work on these legal holidays.

On July 12, 1982, the Agricultural Marketing Service published in the **Federal Register** (Vol. 47, No. 133, pages 30079–30080) a proposed rule to change the basis for collecting fees on Federal legal holidays from users of meat grading and certification services. It was published for comment as a means of providing full public participation in the rulemaking process. Comments on this amendment were requested by September 10, 1982.

During the comment period, the Agency received three letters in response to the proposed rule. Two letters were received from meat associations and one from a meatpacking company. All comments were favorable and fully supported the intent of the proposed rule to eliminate charging fees for meat grading and certification services on Federal legal holidays when no services are performed on these holidays.

Based on the comments and the Agency's rationale for amending the regulations, the Department has determined that it would be more equitable among all users of the service if commitment plants are not required to pay for time on Federal legal holidays when no services are provided on these days. Therefore, the Department is eliminating the requirement that commitment users guarantee a minimum payment for 8 hours of service on Federal legal holidays occurring Monday through Friday. The change will not affect the requirement that all establishments must pay for the hours they actually utilize grading or certification services on Federal legal holidays. This change will make charges for service more equitable among all users of the service without imposing additional costs to the industry. This action also may make the use of grading and certification services more affordable on a commitment basis. No significant adverse effect on program revenue is anticipated as a result of this action.

In view of the foregoing and pursuant to the authority in 5 U.S.C. 553, it is found that other public procedure and notice with respect to these amendments are impractical and unnecessary, and good cause is found for making these amendments effective as final rule without changes. Accordingly, certain sections of the regulations appearing in 7 CFR, Part 54,

as they relate to commitment agreements and fees for Federal grading and certification of meats, prepared meats, and meat products, are revised as set forth below.

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 reads as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

2. 7 CFR 54.6(c)(2) and 54.27(b) are revised to read as follows:

§ 54.6 How to obtain service.

* * * * *

(c) Request by applicant for service * * *

(2) *Commitment.* If desired, the applicant may request to enter into an agreement with the Agricultural Marketing Service for the furnishing of service on a weekly commitment basis, whereby the applicant agrees to pay for 8 hours of service per day, 5 days per week, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed, as provided in § 54.27(b), and the Agricultural Marketing Service agrees to make an official grader available to perform such service for the applicant. However, the Agricultural Marketing Service reserves the right to use any grader assigned to a plant under such a commitment to perform service for other applicants when, in the opinion of the Chief, the grader is not needed to perform service for the commitment applicant. An applicant who terminates a commitment, and within 1 year after cancellation is granted a new commitment at his request, shall pay for the moving costs actually incurred by the Agricultural Marketing Service to cover the transfer of the grader who will service the applicant's new commitment. If more than one applicant is involved in the reapplication for a canceled meat grading and certification commitment requiring the transfer of the grader, the moving costs will be prorated among the applicants according to each applicant's committed portion of the grader's services. However, the moving costs will be charged only to those applicants who were parties to the previously canceled commitment. An applicant may, for periods of 3 months or less, enter into an agreement by memorandum with the Agricultural Marketing Service for the furnishing of service on a weekly basis. In the latter case, transfer of graders would not be involved and charges will be made in accordance with § 54.27.

§ 54.27 Fees and other charges for service.

* * * * *

(b) *Fees for Service on Commitment Basis.* Minimum fees for service performed under a commitment agreement shall be on the basis of 8 hours per day, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed, calculated at the hourly rates in accordance with paragraph (a) of this section. Hours worked on Saturdays, Sundays, Federal legal holidays, and in excess of 8 hours per day will be charged at the appropriate hourly rate in accordance with paragraph (a) of this section. The Agricultural Marketing Service reserves the right under such a commitment to use any grader assigned to the plant on a commitment basis to perform service for other applicants as provided in § 54.6(c), crediting the commitment applicant with the number of hours charged to the other applicant, provided the allowable credit hours, plus hours actually worked for the applicants, do not exceed 8 hours on any day, Monday through Friday, excluding all Federal legal holidays.

* * * * *

Done at Washington, D.C., October 5, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82-27961 Filed 10-8-82; 8:45 am]

BILLING CODE 3110-02-M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine and Tangelo Regulation 6, Amendment 13]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This regulation increases the minimum grade requirement applicable to fresh domestic and export shipments of white and pink seedless grapefruit from Improved No. 2 to U.S. No. 1 (internal) and Improved No. 2 (external). This regulation also decreases the minimum size requirement applicable to fresh shipments of Honey variety tangerines from 2 1/16 inches to 2 8/16 inches in diameter for domestic shipments and from 2 8/16 inches to 2 6/16 inches for export shipments. Such action is necessary to promote orderly marketing of suitable grades of seedless grapefruit and sizes of tangerines.

DATES: October 18, 1982 through December 12, 1982, comments which are received by November 12, 1982 will be considered prior to issuance of a final rule to become effective December 13, 1982.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the Florida seedless grapefruit crop and Honey tangerine crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of the Florida seedless grapefruit and Honey tangerine crops, as hereinafter provided, will tend to effectuate the declared policy of the Act.

This interim rule would be effective during the period October 18, 1982 through December 12, 1982. Interested persons are invited to comment through November 12, 1982 with regard to the interim rule and the proposed final regulation.

This amendment would increase limitations on the handling of white and pink seedless grapefruit by permitting each handler during the period October 18, 1982 through December 12, 1982, to ship U.S. No. 1 (internal) and Improved

No. 2 (external) seedless grapefruit to domestic and export markets. The minimum grade requirements, specified herein, reflect the committee's and the Department's appraisal of the need to revise the grade requirements applicable to Florida seedless grapefruit in recognition of the two preceding seasons in which severe freezes occurred. Such freezes result in some grapefruit damage in the production area. This slightly more restrictive internal grade requirement (U.S. No. 1) aids in preventing both domestic and export shipments of lower quality or damaged fruit in the event such a freeze occurs. Specification of such a requirement assures that the available supply of marketable fruit reaches the consumer.

Further, this amendment would decrease limitations on the handling of Honey tangerines by permitting each handler, during the period October 18, 1982 through December 12, 1982, to ship Honey tangerines for domestic shipment of 150 size (2$^{9}/_{16}$ inches) or larger and to ship 176 size (2$^{5}/_{16}$ inches) or larger to export markets. The committee indicates that this relaxation of size restrictions would be in conformance with the U.S. Department of Agriculture's Guidelines, allowing a greater percentage of the crop to be marketed in fresh domestic and export channels.

Under section 8e of the Act (7 U.S.C. 608e–1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, grade requirements for imported white and pink seedless grapefruit will also change to conform to the grade requirements for domestic shipments of Florida white and pink seedless grapefruit. It is hereby found that this regulation will tend to effectuate the declared policy of the Act.

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 of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that (1) shipment of the 1982–83 Florida citrus crop began during September of 1982; (2) the seedless grapefruit and Honey tangerine regulation was unanimously recommended by the committee following discussion at a public meeting; and (3) Florida citrus handlers have been apprised of these requirements for seedless grapefruit and Honey tangerines and the effective dates.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida Grapefruit, Oranges, Tangelos, Tangerines.

Accordingly, the provisions of § 905.306 (Orange, Grapefruit, Tangerine and Tangelo Regulation 6 (46 FR 60170; 7203; 10065; 21755; 25935; 34351; 44538)) are amended by revising Table I paragraph (a) applicable to domestic shipments and Table II, paragraph (b), applicable to export shipments, to read as follows:

§ 905.360 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a)* * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (in.) (4)
* * *	*	* * *	*
Grapefruit:			
Seedless, except pink	10/18/82–12/12/82	Improved No. 2 (External) U.S. No. 1 (Internal).	3$^{7}/_{16}$
Seedless, pink	10/18/82–12/12/82	Improved No. 2 (External) U.S. No. 1 (Internal).	3$^{7}/_{16}$
Tangerines:			
Honey	10/18/82–12/12/82	U.S. No. 1	2$^{9}/_{16}$
* * *	*	* * *	*

(b) * * *

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (in.) (4)
* * *	*	* * *	*
Grapefruit:			
Seedless, except pink	10/18/82–12/12/82	Improved No. 2 (External) U.S. No. 1 (Internal).	3$^{7}/_{16}$
Seedless, pink	10/18/82–12/12/82	Improved No. 2 (External) U.S. No. 1 (Internal).	3$^{7}/_{16}$
Tangerines:			
Honey	10/18/82–12/12/82	U.S. No. 1	2$^{9}/_{16}$
* * *	*	* * *	*

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

Dated: October 5, 1982.

D. S. Kuryloski,

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

[FR Doc. 82-27810 Filed 10-8-82; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R-0371]

Reserve Requirements of Depository Institutions; Contemporaneous Reserve Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules.

SUMMARY: The Board of Governors has amended Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) to modify the manner in which depository institutions maintain required reserves. The changes adopted by the Board will introduce contemporaneous reserve requirements on transaction accounts for medium-size and larger depository institutions instead of the lagged system now in effect. Under the Board's action, depository institutions that have total deposits of $15 million or more, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks will be required to maintain required reserves on transaction accounts on a daily average basis for a fourteen-day maintenance period ending on the first Wednesday after the fourteen-day

computation period, which ends on a Monday. Thus, the reserve maintenance period for transaction accounts will be lagged by only two days from the end of the reserve computation period for transaction accounts. The fourteen-day reserve maintenance period for nonpersonal time deposits and Eurocurrency liabilities will begin seventeen days after the end of the corresponding fourteen-day reserve computation period. Currently, an institution subject to the new requirement maintains its required reserves on a daily average basis over a seven-day period ending on a Wednesday two weeks subsequent to the reserve computation period. To ease the transition to this new procedure for reserve maintenance, allowable carryover of excessive or deficiencies in reserve balances will be increased temporarily from 2 percent to 3 percent but will phase down to 2 percent over a one-year period. The Board also has established a minimum carryover amount of $25,000. The Board believes that shortening the lag between the computation and maintenance of required reserves on transaction accounts will enhance the conduct of monetary policy by strengthening the linkage between the supply of reserves and the money supply.

EFFECTIVE DATE: February 2, 1984. This date is the beginning of the first reserve maintenance period to which contemporaneous reserve requirements will apply.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel, (202/452–3625), or Paul S. Pilecki, Senior Attorney, (202/452–3281), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: In order to satisfy the reserve requirements imposed under the current provisions of Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204), depository institutions that have total deposits of $15 million or more, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks are required to maintain reserve balances at Federal Reserve Banks on a daily average basis over a seven-day reserve maintenance period ending on Wednesday. The amount of reserves that are required to be maintained during a given reserve maintenance week are based upon the level of the institution's daily average deposits during the seven-day reserve computation period which begins on a Thursday two weeks prior to the beginning of a given reserve maintenance week. United States currency and coin held during the reserve computation period are deducted from the balances that are required to be maintained at the Reserve Bank during the corresponding reserve maintenance week. Depository institutions with total deposits of less than $15 million generally are subject to a quarterly procedure for reporting deposits and maintaining reserves.

In connection with a proposal in June 1980 to revise Regulation D to implement the Monetary Control Act of 1980 (Title I of Pub. L. 96–221), the Board requested comment on the issue as to whether reserves should be maintained on a contemporaneous basis (45 FR 38388). When Regulation D was revised in August 1980 (45 FR 56069), the Board stated that it was disposed toward returning to contemporaneous reserve requirements ("CRR"), if a further investigation of potential operational difficulties indicated that such a system was practical. Among the issues to be studied were the feasibilities of such a reserve accounting system for all types of depository institutions, potential complications arising from pass-through arrangements, and the relation to reserve carryover. The Board, after considering these issues, requested public comment in November 1981 on a proposal that would implement a procedure of contemporaneous reserve requirements (46 FR 58185).

Under the proposal, the reserve computation period would cover the fourteen-day period beginning Tuesday and ending on the second Monday thereafter. The corresponding reserve maintenance period for transaction accounts would begin on the Thursday immediately after the start of the reserve computation period and would end on the Wednesday immediately after the end of the reserve computation period. For all other reservable liabilities, such as nonpersonal time deposits and Eurocurrency liabilities, the corresponding reserve maintenance period would begin seventeen days after the end of the corresponding reserve computation period. Reserve requirements would continue to be computed based upon the daily average deposits outstanding during the reserve computation period. Reserve requirements would be required to be satisfied (1) by the U.S. currency and coin held by the institution on a daily average basis during the fourteen-day reserve computation period which begins on a Tuesday, 30 days prior to the beginning of a reserve maintenance period, and (2) by balances maintained with a Federal Reserve Bank on a daily average basis during the fourteen day reserve maintenance period which begins two days after the beginning of the reserve computation period for transaction accounts and which begins 30 days after the beginning of the reserve computation period for all other reservable liabilities.

An institution would continue to be permitted to carry forward to the following fourteen-day reserve maintenance period excesses or deficiencies up to 2 percent of its required reserves. The proposed procedure for reserve maintenance would apply to depository institutions that have total deposits of $15 million or more, all Edge and Agreement corporations, and all U.S. branches and agencies of foreign banks subject to reserve requirements under Regulation D.

The Board received approximately 180 comments from the public on the proposal, primarily from depository institutions and their industry trade groups. Those commenting in favor of CRR generally expressed the view that the benefits of improved monetary control and consequent improvements in the national economy would override any costs that would be imposed on depository institutions and the Federal Reserve. Commentators generally were opposed to CRR on the grounds that it would improve monetary control only in the short run and that the benefits over a longer period would be minimal. Commentators also stated that their view that the benefits of CRR would not be outweighed by the substantial increases in costs, including these related to revisions of depository institutions' existing procedures for collecting data on deposits, monitoring deposits, and managing reserves. However, the range of estimates provided to the Board for initial and continuing costs varied widely.

With respect to comments on particular elements of the proposal, such comments generally opposed as being too short a two-day lag between the end of the reserve computation and maintenance periods, favored increasing such periods to two weeks or longer as facilitating the management of reserve positions, and favored expanding the amount of excesses or deficiencies in reserve balances that may be carried over from one reserve maintenance period to another. Other issues were commented upon less frequently. These comments indicated that CRR would complicate reserve balance pass-through procedures, suggested that there would be a need for liberalization of the Federal Reserve's policy regarding as-of

adjustments to reserve accounts, and favored implementation of CRR on all reservable liabilities rather than only on transaction accounts in order to reduce confusion and cost burdens.

After consideration of all of the comments received, the Board has determined to adopt the procedure of CRR substantially in the form proposed. The Board believes that the improvements in monetary control to be gained by CRR outweigh the costs to depository institutions. The CRR procedure will become effective in February 1984. This will provide depository institutions sufficient time to modify their accounting systems and procedures to implement CRR. In addition, in order to assist depository institutions as they adjust their operations to the new reserve maintenance procedures, the Board has provided for a temporary increase in the amount of allowable carryover of excesses or deficiencies of reserve balances (including required clearing balances). In this regard, allowable carryover will be 3 per cent of required reserves for the first reserve maintenance period under CRR and for all maintenance periods during the first six months following implementation. Allowable carryover will be reduced to 2½ per cent of required reserves over the subsequent six-month period. Approximately one year after implementation of CRR, allowable carryover will return to 2 percent of required reserves. In order to assist small depository institutions, the Board has adopted a minimum carryover amount of $25,000. Thus, an institution's carryover will be the larger of the applicable percentage (3, 2½, or 2) or $25,000.

Under the new procedure, an institution subject to CRR will be required to maintain a reserve balance at the Federal Reserve (directly or on a pass-through basis) on a daily average basis during the fourteen-day reserve maintenance period beginning Thursday, February 2, 1984, and ending on Wednesday, February 15, 1984, based upon daily average transaction accounts held during the fourteen-day reserve computation period beginning Tuesday, January 31, 1984, and ending Monday, February 13, 1984, and upon daily average nonpersonal time deposits, Eurocurrency liabilities, and other reservable liabilities during the fourteen-day reserve computation period beginning Tuesday, January 3, 1984, and ending Monday, January 16, 1984, after deducting the daily average amount of the institution's currency and coin maintained durir g the fourteen-day computation period beginning Tuesday, January 3, 1984, and ending Monday, January 16, 1984.

An institution subject to CRR holding transaction accounts or nonpersonal time deposits will continue to file a report of deposits each week with the Federal Reserve Bank of its District. Each report will reflect daily data for transaction accounts and other reservable liabilities as of the close of business for each day of the Tuesday through Monday reporting week. Although the reserve maintenance periods for transaction accounts and for other reservable liabilities will not coincide, all weekly reports will reflect data for deposits actually held during a particular reporting period.

The Board has considered the impact of CRR on small depository institutions in accordance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 604). The Board has determined that depository institutions that have total deposits of less than $15 million will continue to report deposits and maintain reserves on a quarterly basis under the lagged system now in effect for such smaller institutions. However, any institution that elects to follow the standard, rather than the quarterly procedures, will report deposits and maintain reserves under the contemporaneous procedure. Institutions that report on a quarterly basis will report deposits for reserve requirement purposes for one seven-day period each quarter beginning on a Tuesday and ending on a Monday. Since the reserve maintenance period for quarterly reporters has not been modified, such institutions will continue to settle their reserve accounts every Wednesday. Documents presenting analyses of alternative procedures for the implementation of CRR are available through the Board's Freedom of Information Office (202/452–2407).

The Board is taking this action in order to enhance the conduct of monetary policy. It is anticipated that a shortening of the lag between the compututation and maintenance of required reserves on transaction accounts will tighten the linkage between the supply of reserves to the depository system and the money stock and thereby enhance the effectiveness of monetary policy.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

PART 204 [AMENDED]

Pursuant to its authority under sections 19, 25 and 25 (a) of the Federal Reserve Act (12 U.S.C. 461, 601 *et seq.*, 611 *et seq.*) and under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), effective February 2, 1984, the Board amends Regulation D (12 CFR Part 204) as follows:

1. In § 204.2(h), footnote 1 is amended by deleting the word "fourth" and inserting in its place the word "second".

2. In § 204.3, paragraphs (c), (d), and (h) are revised to read as follows:

§ 204.3 Computation and maintenance.

* * * * *

(c) *Computation of required reserves.* (1) Required reserves are computed on the basis of daily average balances of deposits and Eurocurrency liabilities during a fourteen-day period ending every second Monday (the "computation period"). Reserve requirements are computed by applying the ratios prescribed in § 204.9 to the classes of deposits and Eurocurrency liabilities of the institution. The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a fourteen-day period (the "maintenance period") which begins on a Thursday and ends on the second Wednesday thereafter.

(2) A reserve balance shall be maintained during a given maintenance period, based

(i) on the daily average net transaction accounts held by the depository institution during the computation period that began immediately prior to the beginning of the maintenance period; and

(ii) on the daily average nonpersonal time deposits and daily average Eurocurrency liabilities held by the depository institution during the computation period that ended seventeen days prior to the beginning of the maintenance period.

(3) In determining the reserve balance that is required to be maintained with the Federal Reserve, the daily average vault cash held during the computation period that ended seventeen days prior to the beginning of the maintenance period is deducted from the amount of the institution's required reserves.

(d) *Special rule for depository institutions that have total deposits of less than $15 million.* (1) A depository institution with total deposits of less than $15 million shall file a report of deposits once each calendar quarter for a seven-day computation period that begins on the third Tuesday of a given month during the calendar quarter. Each Reserve Bank shall divide the depository institutions in its District that qualify under this paragraph into three substantially equal groups and assign

each group a different month to report during each calendar quarter.

(2) Required reserves are computed on the basis of the depository institution's daily average deposit balances during the seven-day computation period. In determining the reserve balance that a depository institution is required to maintain with the Federal Reserve, the daily average vault cash held during the computation period is deducted from the amount of the institution's required reserves. The reserve balance that is required to be maintained with the Federal Reserve shall be maintained during a corresponding period that begins on the fourth Thursday following the end of the institution's computation period and ends on the fourth Wednesday after the close of the institution's next computation period. Such reserve balance shall be maintained in the amount required on a daily average basis during each week of the quarterly reserve maintenance period.

(3) * * *

(4) A depository institution that qualifies under this paragraph may elect at the beginning of a calendar year to report deposits on a weekly basis and maintain reserves during fourteen-day reserve maintenance periods in accordance with paragraph (c) of this section.

* * * * *

(h) *Carryover of excesses or deficiencies.* (1) For a depository institution computing required reserves under paragraph (c) of this section, any excess or deficiency in a required reserve balance for any maintenance period that does not exceed the greater of the percentage set forth in the schedule below of the institution's required reserves (including required clearing balances) or $25,000, shall be carried forward to the next maintenance period.

Reserve maintenance periods occuring between	Percentage applied to determine allowable carryover
Feb. 2, 1984 and Aug. 1, 1984	3
Aug. 2, 1984 and Jan. 30, 1985	2½
Jan. 31, 1985 and forward	2

(2) For a depository institution reporting deposits and maintaining required reserves under paragraph (d) of this section, any excess or deficiency in a required reserve balance for any maintenance period that does not exceed the greater of 2 percent of the institution's required reserves (including required clearing balances) or $25,000, shall be carried forward to the next maintenance period.

(3) Any carryover not offset during the next period may not be carried forward to additional periods.

* * * * *

3. Section 204.4 is amended by revising the schedule in paragraph (a) as follows:

§ 204.4 Transitional adjustments.

* * * * *

(a) * * *

Reserve maintenance periods occuring	Percentage that computed reserves will be reduced
Nov. 13, 1980 to Sept. 2, 1981	87.5
Sept. 3, 1981 to Sept. 1, 1982	75
Sept. 2, 1982 to Aug. 31, 1983	62.5
Sept. 1, 1983 to Sept. 12, 1984	50
Sept. 13, 1984 to Sept. 11,1985	37.5
Sept. 12, 1985 to Sept. 10, 1986	25
Sept. 11 1986 to Sept. 9, 1987	12.5
Sept. 10, 1987 and forward	0

* * * * *

§ 204.7 [Amended]

4. In the third sentence of section 204.7(a)(1), by deleting the word "computation" and inserting the word "maintenance" in its place.

By order of the Board of Governors, October 5, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-27835 Filed 10-8-82; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 205

[Reg. E; Docket No. R-0388]

Electronic Fund Transfers; Exemptions Documentation of Transfers Procedures for Resolving Errors

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting four amendments to Regulation E, Electronic Fund Transfers. The amendments will (1) exempt from the regulation pre-authorized electronic fund transfers to or from accounts of financial institutions with assets of $25 million or less; (2) provide that the terminal receipt need not disclose the type of account involved, in an automated teller machine transaction where only one particular account can be accessed by the consumer; (3) exempt from duplicative periodic statement requirements certain transfers between a consumer's accounts held at the same institution; and (4) modify documentation and error resolution requirements for the transfers initiated outside the United States. These amendments are in response to requests from financial institutions, and are designed to reduce regulatory burdens without giving up significant consumer protection.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation, contact: Jesse B. Filkins or John C. Wood, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3867). Regarding the economic impact analysis, contact: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2584).

SUPPLEMENTARY INFORMATION: (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E. In March 1982 (47 FR 12997), the Board proposed four amendments to the regulation that would reduce finanical institutions' compliance costs and allow for the continued development of electronic fund transfer (EFT) services. The Board has now adopted the amendments.

Section 904(a)(2) of the EFT Act requires the Board to prepare an analysis of the economic impact of the regulation that considers, among other things, the impact of the regulation on the various participants in the electronic fund transfer system, the effect upon competition in the provision of electronic fund transfer services among large and small financial institutions, and availability of such services to different classes of consumers, particularly low-income consumers. In addition, section 604 of the Regulatory Flexibility Act (5 U.S.C. 604) requires that final regulations be accompanied by a regulatory flexibility analysis. The statement appearing in section (3) below satisfies both of these requirements. Two tables of data used in the analysis are not being published, but may be obtained by writing to Frederick J. Schroeder at the address indicated above under ("For Further Information").

To the extent that these amendments modify positions stated in the Official Staff Commentary to Regulation E, the

commentary is superseded. Changes reflecting the amendments will be incorporated when the commentary is updated.

(2) *Regulatory provisions. Section 205.3(g)—Preauthorized transfers to and from accounts at small financial institutions.*

The EFT Act and Regulation E cover all fund transfers that are electronically initiated and that access accounts established primarily for personal, family, or household purposes. This includes preauthorized electronic fund transfers (such as Social Security payments, payroll deposits, and insurance payments) which originate with an authorization by the consumer whose account is affected. Applicable requirements of Regulation E include disclosure of certain account terms, periodic statements of activity in the account, and prescribed error resolution procedures, among others.

In March 1982, the Board proposed to exempt from the requirements of the regulation transfers under the federal recurring payments program for all financial institutions with assets of $15 million or less. Small financial institutions often receive preauthorized electronic fund transfers through a correspondent institution, a service bureau, or an automated clearinghouse (ACH), sometimes in the form of paper printouts. Many of these institutions receive no electronic fund transfers other than federal recurring payments and, therefore, are required to comply with the regulation simply because they participate in the government's program.

The exemption was proposed under the Board's statutory authority to exempt small financial institutions from undue burdens of complying with the regulation. An asset-size cutoff was proposed because of the simplicity of implementation and the certainty with which financial institutions can determine whether or not they qualify for the exemption.

Asset size. The great majority of commenters requested that the asset-size limitation either be increased or removed totally. They believed that large institutions would benefit from the exemption as much as small institutions, that there was no loss of consumer protection, and that the same benefit should extend to all institutions.

There is no established definition of a small financial institution. The $15 million cutoff contained in the March proposal was selected in part because it corresponded to the asset level cutoff used in Regulation D, which also differentiates among institutions on the basis of asset size. The data available regarding participation of banks in electronic transfer services supports the premise that institutions under $50 million in asset size play a more limited role in providing electronic fund transfer services to consumers. For example, a 1981 survey conducted by the American Bankers Association showed that of 191 bank respondents under $50 million, only 6.3 percent offered automated pay-by-phone, 8.4 percent had automated teller machines, and .5 percent had cash dispensing machines. (There is no available breakdown below $50 million.)

The Board has chosen to retain an asset limitation, but has increased the asset ceiling to $25 million. The Board believes an asset-size cutoff of $25 million strikes a balance in maximizing the number of institutions exempted and minimizing the number of consumers affected. Such an increase more effectively implements the Board's statutory mandate to provide regulatory relief from compliance burdens for small institutions.

Private sector preauthorized transfers. Some commenters expressed concern that the narrow exemption proposed would inhibit financial institutions from expanding their EFT involvement. If only government payments were exempted, financial institutions might be discouraged from expanding their programs to include private sector preauthorized transfers because of the additional compliance costs that would be incurred. Such action, they believed, would be contrary to the Board's mandate to provide a regulatory scheme that will encourage the development of EFT services.

The Board has determined that exemption for only federal recurring payments would provide minimal benefits for small financial institutions that receive both private and public preauthorized transfers, but provide no other EFT services. The institution receiving private sector transfers would still incur the costs and burdens of compliance even though the private sector transfers are accomplished in the same manner as the government-initiated transfers. Both types of transfers are made through ACH systems using the same equipment and procedures, and may arrive at the receiving financial institution interspersed on the same tape. It would be difficult and costly for a financial institution to separate these transactions in order to take advantage of an exemption for government transfers.

The Board is exempting these preauthorized transfers from all requirements of the regulation rather than retaining some provisions, such as error resolution procedures. Retention of some of the provisions would not provide the desired relief for small financial institutions because, in that event, they still would incur the costs of determining what is required by those provisions and establishing procedures to assure compliance. The Board believes that little consumer protection is lost because private sector agreements, such as the National Automated Clearing House Association rules, and Treasury regulations provide protections similar to Regulation E.

Section 205.3(g)(1), as adopted, exempts preauthorized transfers as a class, not the financial institutions themselves. Therefore, a small financial institution that provides EFT services other than preauthorized transfers must comply with the regulation for those *other* services. For example, a small financial institution that offers its customers ATM services must comply with Regulation E concerning the issuance of debit cards, terminal receipts, periodic statements, and other requirements.

In addition, provisions of the act that apply to the financial institution's conduct rather than the exempted transfers, such as the prohibition against compulsory use of electronic fund transfers in section 913, will continue to apply. This prohibition is retained by applying existing footnote 1a to the exemption being adopted.

The determination as to whether a financial institution meets the asset-size test is to be made on December 31. Financial institutions should use total assets on December 31, 1981, to determine coverage on the effective date of this amendment. An institution whoses assets exceed $25 million at the end of a subsequent calendar year will have a one-year grace period for complying with the regulation. For example, if an institution is exempt on December 31, 1982, but exceeds the $25 million cutoff on December 31, 1983, it need not comply with the regulation until January 1, 1985.

Section 205.9(a)(3)—Disclosure of Type of Account on Terminal Receipt

For transfers initiated at an electronic terminal, Regulation E requires that the terminal receipt indicate the "type of account" accessed. The Board proposed an exemption from this requirement for transfers taking place at remote terminals in an interchange or shared ATM system, if only one of the consumer's accounts may be accessed in such transfers.

Most of the commenters supported the basic thrust of the proposal; however, many suggested an expansion of the scope of the exemption. They believed

that relief from the requirement to indicate the type of account is appropriate, and needed, in circumstances beyond those covered in the proposal. They said that in some interchange systems it may be just as difficult to provide information on the type of account at the account-holding institution's own terminals as it is at terminals of other institutions in the system. They indicated that some proprietary ATM systems face the same sort of difficulty.

The EFT Act requires that a financial institution provide "the identity of the consumer's account * * * from which or to which funds are transferred." The regulation implements this requirement by providing that the terminal receipt identify the "type of account" accessed. The Board believes that in circumstances where the consumer may, in fact, access only one account, this identification requirement is satisfied by the disclosure of the card number or the account number on the terminal receipt, which consumers already receive under current requirements of Regulation E.

Accordingly, the Board is expanding the exemption, making it applicable to any transfer initiated at an electronic terminal where the consumer can access only one account at that terminal and hence knows which account is involved. The exemption applies in any ATM system—shared, interchange, or proprietary—in which the consumer's access device can only access a particular account. Ownership of the terminal is not a factor as to whether the exemption applies.

The existing exemption from "type of account" disclosure for point-of-sale transfers where only one account may be accessed is subsumed into the new amendment, which has been implemented by revising the final sentence in footnote 3 to § 205.9(a)(3).

One commenter pointed out that in some ATM interchange systems consumers can access multiple accounts of a particular type at terminals operated by the account-holding institution, but can access only one account of each type (for example, one checking and one savings account) at terminals operated by institutions other than the one holding the account. The commenter requested the same sort of exemption for this system as was proposed for other interchange systems, i.e., that the terminal receipt need not uniquely identify the account accessed although it would identify the type of account. The Board believes that the existing language of the regulation permits such a procedure, and the staff will revise the Regulation E commentary to reflect this interpretation.

The Board's action reverses question 9–9 of the commentary to Regulation E, which currently specifies that the type of account accessed must be identified on an ATM receipt even though only one account may be accessed at that terminal. Question 9–9 of the commentary will be revised to reflect the amendment.

Section 205.9 (c), (d), and (h)—Nonautomatic Transfers Between Consumer Accounts

Currently, Regulation E requires that a financial institution must provide a periodic statement, usually monthly, for each account that may be accessed by electronic fund transfers. Therefore, for telephone transfers of funds between a consumer's accounts (for example, a savings account and a checking account), a statement must be provided for each account.

The March 1982 proposal would have relieved financial institutions of the need to provide a statement for each account where such telephone transfers take place within the same institution, so long as one of the accounts received a complying statement. Consumer protection would be maintained because that statement would properly identify each electronic fund transfer that occurred between the two accounts. If, at a later date, the consumer received information that an error was reflected in the account for which the periodic statement had not been provided (for example, on the customary statement or passbook update provided for the account), the error resolution procedure would still be available to the consumer.

Under the March proposal, the exemption from the periodic statement requirement would have been unavailable for accounts accessible by EFTs other than telephone transfers. Commenters indicated that in order to accomplish the objective of eliminating duplicative statements, the exception should be expanded to include intra-institutional transfers initiated by the consumer at an ATM. Otherwise, they said, statements would have to be provided for both accounts when these ATM transfers occurred even though they are functionally the same as those initiated through a telephone. Accordingly, the amendment adopted by the Board expands the exemption to apply to electronic transfers between a consumer's accounts at the same financial institution, regardless of the manner in which the transfer is effected.

Commenters also requested that the restriction against access by electronic fund transfers other than telephone transfers be eliminated. Removing the restriction would make the exemption available (in months when the account is *accessed* only by intra-institutional transfers) to an account that is *accessible by* other EFTs—for example, cash withdrawals from an ATM.

In response to this suggestion, the Board has deleted the requirement that the exemption apply to accounts that are accessible electronically only by such intra-institutional transfers.

While the amendment relieves financial institutions of the need to provide a periodic statement that complies with Regulation E requirements as to frequency and content, all other provisions of the regulation continue to apply to these intra-institutional transfers. In particular, it should be noted that error resolution rights are applicable and that the time limits will run from the consumer's receipt of the customary form of documentation provided by the financial institution—passbook updates or quarterly periodic statements, for example.

As indicated in footnote 9a, the exemption does not modify the special periodic statement requirements for accounts that are accessible by preauthorized transfers to the account as set forth in § 205.9 (c) and (d). That is, accounts receiving preauthorized transfers may continue to be documented in accordance with the provisions of § 205.9 (c) and (d) despite the fact that the account is accessed by transfers to or from another account of the consumer at the same financial institution.

Sections 205.9(i) and 205.11(c)(4)—Foreign-Initiated Transfers

The EFT Act applies to financial institutions holding consumer accounts within the United States and its territories. Therefore, electronic fund transfers to or from these accounts that are initiated outside of the U.S. and its territories are subject to the provisions of the act and the regulation.

In March, in response to requests from bank card organizations that were developing international EFT transfer systems, the Board proposed to exempt foreign-initiated transfers from the receipt and periodic statement requirements of the regulation, and to modify the error resolution procedure for such transfers by extending the period in which institutions could respond to allegations of error from 45 calendar days to 90 calendar days. These U.S. based organizations state that they do not have the bargaining power to negotiate the content or language of terminal receipt disclosures, and that foreign terminal operators may

not provide the U.S. based institution with the necessary information to comply with the periodic statement informational requirements. Additionally, language differences and geographical (mailing) distances make error resolution with the 45 days prescribed by the regulation virtually impossible.

Commenters overwhelmingly supported the proposal. However, many of them suggested that the Board also expand the time in which institutions could resolve error allegations without provisionally recrediting an account, from 10 business days to 20 business days. They say that most error claims in domestic transfers are resolved within 10 business days, but in light of the language and distance problems associated with foreign-initiated transfers, retention of the 10-business-day rule regarding provisional recrediting presents a problem and could expose U.S. institutions to possible fraud.

The Board is now adopting the amendment proposed in March regarding the receipt and periodic statement requirements and the extension of the time period in which errors must be resolved by financial institutions. The amendment also extends the time period that a financial institution has for resolving an error before it is necessary to provisionally recredit the account—from 10 business days to 20 business days.

The Board expects that financial institutions taking advantage of the relaxation of documentation requirements will make a good faith attempt to obtain, and provide the consumer with, the information required by the regulation. At a minimum, the financial institution should be able to provide the consumer with enough information so that the consumer may ascertain that the transaction is valid. For example, even though the financial institution may not be able to provide the location of the specific terminal, it should, if possible, identify the country and the city in which the transfer was initiated.

Section 205.11(b)(1)(i) of the regulation provides that a notice of error from a consumer must be received by the financial institution no later than 60 days after the occurrence of certain events described in that section. As adopted, the amendment does not provide the consumer with additional time beyond the 60 days prescribed in § 205.11(b)(1)(i).

(3) *Economic impact analysis. Section 205.3(g).*

The Board exempts from Regulation E all preauthorized electronic transfers to or from consumer accounts at financial institutions that have total assets of $25 million or less. The exemption is based on the finding that small institutions bear an undue compliance burden with respect to preauthorized transfers.

Many small institutions appear to be subject to Regulation E solely because they receive preauthorized credits and debits that were electronically initiated. Most of these transfers are federal recurring payments, primarily Social Security benefits that are credited monthly to consumer accounts.

Substantial compliance costs can be incurred by financial institutions receiving preauthorized transfers. For institutions that receive no other types of electronic transfers, the receipt of preauthorized transfers requires full compliance with many of the most costly provisions of Regulation E, some of which entail relatively large set-up expenses regardless of the number of consumer accounts or transfers involved. Among the most costly compliance activities required for institutions receiving preauthorized electronic transfers are the establishment of error resolution procedures, design of disclosure documents, training of personnel, and changes in statement content, format, and frequency. Moreover, many small institutions may receive such transfers in paper form from correspondent banks, service bureaus, or other intermediaries, in which case the small institutions do not engage directly in electronic processing and do not perceive such paper-based transfers as electronic items requiring compliance with Regulation E.

Available evidence indicates that relatively few small institutions offer EFT services other than preauthorized transfers. (Tables of data used in preparing this analysis are available on request from the Board. See the "For Further Information" section above.) Moreover, the number of small institutions offering preauthorized electronic transfers is likely to grow rapidly. In May 1982 there were 10,709 banks and 3,304 thrift institutions participating in automated clearing houses and therefore likely to be handling preauthorized transfers.[1] Because almost all large banks and thrifts currently participate in automated clearing houses, further growth in the number of participants will come primarily from small institutions.

The cost advantages of preauthorized electronic transfers over paper checks are evident from a recent study of the U.S. Treasury's Direct Deposit Program.[2] The study revealed that the average cost incurred by an institution in processing a Social Security payment was $0.59 for a check received in the mail, $0.24 for a check received over the counter, and $0.07 for an electronic direct deposit. The cost advantage, coupled with promotional efforts by the Federal Reserve System, Treasury, and private firms to encourage use of the automated clearing house network, ensures increasing participation by small institutions in preauthorized payment programs.

Consumer demand for preauthorized transfers is substantial and growing rapidly. For example, by the end of 1980, 10.3 million, or 31 percent, of all Social Security payments were made electronically through the Direct Deposit Program. The U.S. Treasury has targeted participation to increase to 55 percent by 1985 and 80 percent by 1990.[3] Other types of federal recurring payments have also been the subjects of successful promotional efforts to encourage consumer use of preauthorized electronic transfers. For example, over 82 percent of all Air Force active duty personnel receive their pay electronically, and all the armed forces and federal agencies are promoting the use of direct deposit.[4]

As more individuals demand electronic transfers, more financial institutions will offer them. Without the exemption, Regulation E compliance responsibilities might deter many small institutions from offering preauthorized transfers. The exemption is expected to provide relief for the many small institutions, including a large number of credit unions, that now offer preauthorized transfers. It will also benefit the many small institutions expected to begin offering preauthorized transfers in the future. Compliance cost savings will arise from a reduction in current compliance expenses and from the limitation of small institutions' exposure to civil and criminal liability for noncompliance.

The potential aggregate compliance cost savings is large because of the large number of financial institutions eligible for relief under the exemption. The extent of the cost savings depends on the definition of a small institution. In

[1] *NACHA SurePay Update* (Washington, D.C.: National Automated Clearing House Association, June 1982).

[2] *Costs and Benefits of Participation in the Treasury Direct Deposit Program* (Park Ridge, Illinois: The Bank Administration Institute, 1981).

[3] *Ibid.*

[4] *Direct Deposit Volume Report* (Washington, D.C.: U.S. Department of the Treasury, June 1982).

arriving at the $25 million asset level definition for the purposes of this exemption, the Board considered the distribution of depository institutions by asset size. Data on the number of institutions and the amount of transaction deposits for selected asset size groupings were considered. By defining small institutions as those having total assets of $25 million or less, the exemption could potentially benefit 7,422 (or 50.3 percent of all) commercial banks, 1,022 (or 25.7 percent of all) savings and loan associations, 101 (or 13.8 percent of all) mutual savings banks, and 17,572 (or 97.4 percent of all) credit unions. In the aggregate, 26,117 (or 69.6 percent of all) depository institutions would potentially benefit from the exemption.

The $25 million asset level definition provides relief to a relatively large proportion of institutions while at the same time affecting a relatively small proportion of consumer transaction deposits. Only 9.3 percent of aggregate transaction deposits would be potentially affected.[5] Moreover, only 9.1 percent of bank transaction accounts with balances of $100,000 or less would be potentially affected.[6]

The exemption would be likely to provide less benefit to institutions larger than approximately $50 million in total assets. Those institutions are likely to be significantly more automated than smaller institutions and to provide other EFT services requiring compliance programs and expenditures. (Survey evidence on the extent of commercial bank automation in selected activities by bank size is available upon request, as noted above.)

Not all small institutions would actually benefit from the exemption. The amount of relief would be limited in that (1) not all small institutions receive the exempted transfers and (2) those small institutions that have already invested in compliance programs may find it disadvantageous to drop their programs, particularly when other EFT services are offered or planned.

Consumer benefits are not likely to be diminished significantly by the exemption. Many of the consumer protections provided by Regulation E for preauthorized transfers are likely to be provided by U.S. treasury rules, existing institutional practices, National Automated Clearing House Association rules, and state laws. Furthermore, the likelihood of errors in preauthorized electronic transfers is very small.

Consumers will benefit from increased availability of automatic preauthorized transfers. To the extent that the exemption promotes the use of such transfers, the exemption will lead to a number of consumer benefits, including (1) increased safety in transactions, (2) increased certainty as to when transfers will be made, and (3) earlier availability of funds to consumers.

Section 205.9(a)(3). The regulation is amended to exempt financial institutions from the requirement that terminal transaction receipts show the type of account accessed. In order for the exemption to apply, the consumer must be able to access only one account at the terminal at the time the transaction occurs. The amendment primarily benefits institutions and consumers involved in electronic fund transfer interchange networks, where disclosure of the type of account accessed would present enormous operational difficulties. A consumer using terminals in an interchange network would know the type of account being accessed. No loss of information would occur for the consumer.

By removing a requirement that would be prohibitively costly for interchange networks to implement, the exemption removes a barrier to network membership growth and to the availability of national interchange services for consumers. The amendment could have a significant positive effect on the ability of some institutions, particularly small institutions, to use network participation as a means to compete in the rapidly evolving marketplace for consumer transaction services. One study has identified 130 shared automated teller machine (ATM) networks in existence as of June 1, 1982.[7] With an estimated 26,800 ATMs in operation at the end of 1981, and with an average of 66,000 transactions per ATM, excluding balance inquiries,[8] there are sufficient terminals and consumer acceptance to support substantial growth in electronic interchange.

Section 205.9(c), (d), and (h). Many financial institutions permit telephone-initiated or ATM-initiated transfers of funds between a consumer's accounts at the same institution. Regulation E is amended to relieve institutions of the need to provide a monthly periodic statement for each of the two accounts involved in such intra-institutional transfers, regardless of how the transfers are initiated. The amendment does not change the requirement that the consumer be furnished with a periodic statement for one account according to the existing provisions of § 205.9; it does provide that the consumer need not be furnished duplicative documentation of the same transfer for the other account involved. This amendment is expected to reduce compliance costs significantly for many institutions and eliminate duplicative paperwork. Consumers would continue to receive timely documentation of all electronic transfers, and there would be no loss of error resolution protections.

Sections 205.9(i) and 205.11(c)(4). All electronic fund transfers initiated abroad are exempted from the regulation's terminal receipt and periodic statement documentation requirements. U.S. financial institutions may be unable to control the capture of fund transfer information or the issuance of receipts at terminals located in foreign nations. The exemption eliminates potential liability for noncompliance with the regulation's documentation requirements with respect to foreign-initiated transfers. Time limits for error resolution and the provisional recrediting of funds are also relaxed by this amendment, thereby allowing institutions more flexibility to investigate and resolve alleged errors involving transfers initiated abroad.

The amendment is expected to make EFT services more accessible to U.S. consumers traveling abroad. Consumer protections are not likely to be reduced significantly by the longer time periods allowed for resolving errors and provisionally recrediting funds.

List of Subjects in 12 CFR Part 205

Banks, banking; Consumer protection; Electronic fund transfers; Federal Reserve System; Penalties.

PART 205 [AMENDED]

(4) Pursuant to the authority granted in 15 U.S.C. 1693b, the Board amends Regulation E, 12 CFR Part 205, by adding a new paragraph (g) to § 205.3, revising the last sentence of footnote 3 to § 205.9(a)(3),adding a new footnote 9a to § 205.9(c) and (d), adding new

[5] If small institutions were defined as those having total assets of $50 million or less, the exemption would encompass 82.2 percent of all depository institutions and 18.5 percent of aggregate transaction deposits.

[6] Based on June 30, 1981, data for commercial banks and mutual savings banks, banks with assets of $25 million or less held 9.1 percent of all bank demand and savings accounts that had account balances of $100,000 or less. Banks with assets of $50 million or less held 20.9 percent of all such accounts. These figures are for accounts owned by individuals, partnerships, and corporations.

[7] *National Directory and Research Report of Shared ATM Networks* (Cambridge, Maryland: Trans Data Corporation, June 1982).

[8] Linda Fenner Zimmer, "ATMs: Time to Fine-Tune and to Plan," *Magazine of Bank Administration*, vol. 58 (May 1982), pp. 20–30.

paragraphs (h) and (i) to § 205.9, and adding a new paragraph (4) to § 205.11(c), as follows:

§ 205.3 Exemptions.

* * * * *

(g) *Preauthorized transfers to small financial institutions.* (1) Any preauthorized transfer to or from an account if the assets of the account-holding financial institution are $25 million or less on December 31.[1a]

(2) If the account-holding financial institution's assets subsequently exceed $25 million, the institution's exemption for this class of transfers shall terminate one year from the end of the calendar year in which the assets exceed $25 million.

* * * * *

§ 205.9 Documentation of transfers.

(a) *Receipts at electronic terminals.** * *

(3) The type of transfer and the type of the consumer's account(s) [3] * * *

* * * * *

(c) *Documentation for certain passbook accounts.* In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to the account,[9a] * * *

(d) *Periodic statements for certain non-passbook accounts.* If a consumer's account other than a passbook account may not be accessed by any electronic fund transfers other than preauthorized transfers to the account,[9a] * * *

* * * * *

(h) *Periodic statements for certain intra-institutional transfers.* A financial institution need not provide the periodic statement required by paragraph (b) of this section for an account accessed only by electronic fund transfers initiated by the consumer to or from another account of the consumer for which the financial institution documents transfers in compliance with paragraph (b) of this section.

(i) *Documentation for foreign-initiated transfers.* Failure to provide the terminal receipt and periodic statement required by paragraphs (a) and (b) of this section for a particular electronic fund transfer shall not be deemed a failure to comply with this regulation, if:

(1) the transfer is not initiated in a state as defined in § 205.2(k); and

(2) in accordance with § 205.11, the financial institution treats an inquiry for clarification or documentation as a notice of error and corrects the error.

* * * * *

§ 205.11 Procedures for resolving errors.

* * * * *

(c) *Investigation of errors.* * * *

(4) If a notice of an error involves an electronic fund transfer that was not initiated in a state as defined in § 205.2(k), the applicable time periods for action in subsections (c), (e), and (f) shall be 20 business days in place of 10 business days, and 90 calendar days in place of 45 calendar days.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 5, 1982.

William W. Wiles,

Secretary to the Board.

[FR Doc. 82-27833 Filed 10-8-82; 8:45 am]

BILLING CODE 6210-01-M

[1a] * * *

[3] * * * The type of account need not be identified if the access device may access only one account at that terminal.

[9a] Accounts that also are accessible by the intra-institutional transfers described in paragraph (h) of this section may continue to be documented in accordance with paragraph (c) or (d) of this section.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-NM-75-AD Amdt. 39-4473]

Airworthiness Directives: Boeing Model 737 Series Airplanes, Line Number 1 Through 208

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) which requires inspection and repair or replacement, as necessary, of the Boeing Model 737 horizontal stabilizer center section rear spar upper chord on aircraft with 35,000 or more landings. Two operators have reported cracked horizontal stabilizer center section rear spar upper chords. Continued operation of the airplane with undetected chord cracks could ultimately result in failure of the horizontal stabilizer and loss of the aircraft.

DATES: Effective date October 18, 1982.

ADDRESSES: The alert service bulletin and documents specified in this Airworthiness Directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Perrella, Airfame Branch, ANM-120S, Seattle Area Aircraft Certification Office, FAA Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2516. Mailing address: Seattle Area Aircraft Certification Field Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68988, Seattle, WA.

SUPPLEMENTARY INFORMATION: Boeing Alert Service Bulletin 737-55A1031 was issued on November 13, 1981, after an operator reported a cracked horizontal stabilizer center section rear spar upper chord on an airplane with 38,200 landings. On March 2, 1982, another operator, responding to the service bulletin, reported a similarly cracked spar chord. In both cases it was necessary to replace the damaged spar chord.

In recognition of this service experience and the criticality of the structure involved, this amendment requires inspection and repair or replacement of the horizontal stabilizer center section rear spar upper chord, as required, to prevent undetected fatigue damage which may result in loss of the horizontal stabilizer.

It is estimated that 208 airplanes may be affected by this AD, that it will require approximately 8 man-hours per airplane to accomplish the required inspection and approximately 40 man-hours per airplane to accomplish modification. The labor costs associated with the inspection and modification, based upon an assumption of $35 per manhour, are $280 and $1,400 respectively, per airplane. Based on these figures the total cost impact of inspection and modification is approximately $350,00. Since many of these aircraft are foreign registered, the total cost impact to the U.S. Fleet will be considerably less.

Since total repair cost will be dependent on the degree of damage found, costs for potential repair are not included in the above estimate. Based on this estimate, this AD 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.

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

List of Subject 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 Airworthiness Directive:

Boeing: Applies to Model 737 series airplanes, certificated in all categories, line No. 1–208.

To detect and/or repair damage due to fatigue in the horizontal stabilizer center section rear spar upper chord, acomplish the following:

A. On all airplanes with 35,000 or more landings, or within 350 landings after the effective date of this AD, whichever occurs later, unless accomplished within the last 4150 landings, and thereafter at intervals not to exceed 4500 landings since the last inspection, eddy current or dye penetrant inspect the upper surface of the forward flange of the horizontal stabilizer center section rear spar upper chord for cracks in the area of each beam gusset plate in accordance with "Part A—INSPECTION" of Boeing Service Bulletin 737–55A1031, dated November 13, 1981, or later FAA approved revision. If cracks are found, repair or replace the damaged chord before further flight in accordance with the 737 Structural Repair Manual, Subject 51–30–09. This inspection is to continue until the modification of paragraph B is accomplished.

B. Modification of the affected spar chord in accordance with "Part B—PREVENTIVE MODIFICATION" of Boeing Service Bulletin 737–55A1031, dated November 13, 1981, or a later FAA approved revision is terminating action for this AD.

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

D. The purposes of complying with this AD, subject to acceptance by the assigned FAA maintenance inspector, the number of landings may be determined by dividing each airplane's hours time-in-service by the operator's fleet average from takeoff to landing for the airplane type.

The manufacturer's specifications and procedures indentified 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 directive who have not already received the above specified alert service bulletin may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98108.

This Amendment becomes effective October 18, 1982.

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

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on September 28, 1982.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 82–27960 Filed 10–8–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 82–ASW–52; Amdt. 39–4469]

Airworthiness Directive; Hiller Aviation; Model UH–12E and L and OH–23F and G Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts a new airworthiness directive (AD) that was previously made effective for all known Unites States owners and operators of Hiller Aviation Model UH–12E and L and OH–23F and G series helicopters by priority mail AD. This amendment requires initial and repetitive inspections of the engine drive torsional coupling housing for cracks. This AD is needed to prevent possible in-flight failure of the torsional coupling which could result in loss of helicopter control.

DATES: Effective October 15, 1982. Compliance required as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Hiller Aviation, 2075 West Scranton Avenue, Porterville, CA 93257. A copy of the referenced Service Bulletin may be reviewed at FAA Headquarters, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591, or Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Hal Ferris, Aerospace Engineer, Propulsion Section, ANM–174W, Federal Aviation Administration, Northwest Mountain Region, Western Aircraft Certification Field Office, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone (213) 536–6381, or Samuel E. Brodie, Helicoper Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624–4911, ext 502.

SUPPLEMENTARY INFORMATION: Priority mail AD No. 82–16–07 was issued on July 23, 1982 requiring initial and repetitive inspection of Hiller model UH–12E and L and OH–23F and G series helicopter engine drive torsional couplings for cracks. The AD was issued as a result of one case of a failed housing and 24 cases of cracked housings being reported. These failures have been reported in certain housings having a cure date of December 1980 or subsequent. Hydrogen embrittlement may have caused these cracks. Failure of this housing will result in loss of torque to the main rotor and tail rotor with subsequent hazardous loss of helicopter control. Immediate corrective action was required. Notice and public procedure thereon was considered impractical and contrary to the public interest and good cause exists for making the airworthiness directive effective immediately to all known U.S. owners and operators of Hiller model UH–12E and L and OH–23F and G helicopters by priority mail AD dated July 23, 1982. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Admendment

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

Hiller Aviation: Applies to Hiller Aviation Model UH–12E and L and OH–23F and G Series helicopters certificated in all categories that are equipped with engine drive torsional coupling assemblies, P/N 21047–9 and P/N 21047–11 (S/N 704 through 766) and P/N 21047–15 (all serial numbers). Airworthiness Docket No. 82–ASW–52. Compliance required as indicated unless already accomplished.

To detect possible cracks and prevent failure of the engine drive torsional coupling assembly accomplish the following:

1. Within 10 hours' time in service after the effective date of this AD and thereafter at

intervals not to exceed 50 hours' time in service:

(a) Remove from the helicopter torsional coupling assemblies P/N 21047–9 and –11 (S/N 704 through 766) and P/N 21047–15 (all serial numbers). These have a stamped rubber cure date of December 1980 or later.

(b) Clean and inspect the lower housing P/N 21046 in the eight window areas adjacent to the engine attach flange using a flourescent penetrant inspection method.

(c) Replace assemblies with cracked housings before further flight and install a serviceable assembly as prescribed in the appropriate model maintenance manual or FAA approved equivalent.

2. The inspections required by this AD are not applicable to UH–12E, or OH–23F and G series helicopters converted to the turbine engine installation by STC SH178WE.

3. Equivalent means of compliance must be approved by the Manager, Western Aircraft Certification Field Office, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009.

4. Special flight permits may be issued in accordance with FAR 21.197 and FAR 21.199 to fly aircraft to a base where compliance with this AD can be accomplished.

Hiller Aviation Service Bulletin S.B. UH–12–21–3 dated August 4, 1982, contains information regarding this AD.

This amendment becomes effective October 15, 1982 to all persons, except those to whom it was made immediately effective by priority mail AD 82–16–07 issued July 23, 1982.

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

Note.—The FAA has determined that this regulation involves an emergency regulation that is not major under Executive Order 12291.

It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition on aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]. If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C.) 1486(a)), it is subject to review by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas on September 21, 1982.

F. E. Whitfield,

Deputy Regional Director.

[FR Doc. 82–27959 Filed 10–8–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 82–ASO–47]

Alteration of Certain Transition Areas in Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters certain transition area descriptions by correcting the names of airports and navigational aids upon which airspace designations are predicated to reflect name changes. No change in airspace designation is intended by this action.

DATES: Effective Date: 0901 G.M.T., December 23, 1982. Comments must be received on or before November 23, 1982.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ATTN: Manager, 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 editorial corrections to the descriptions of certain transition areas 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 correctly list the names of airports and navigational aids specified in certain airspace designations.

The names of various airports and navigational aids have been changed and it is necessary to alter the transition area descriptions to reflect these name changes. 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 a need for a regulation to alter the various transition areas to reflect recent airport and navigational aid name changes. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective in less than 60 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 GMT, December 23, 1982, as follows:

Bennettsville, SC—Amended

Be deleting the words, "* * * Bennettsville Airport * * *", and substituting for them the words, "* * * Marlboro County Airport * * *."

Cedar Springs, GA—Amended

By deleting the words, "* * * Dothan VORTAC * * *", and substituting for them the words, "* * * Wiregrass VORTAC * * *."

Glasgow, KY—Amended

By deleting the words, "* * * Glasgow RBN * * *", and substituting for them the words, "* * * Beaver Creek RBN * * *."

Kenansville, NC—Amended

By deleting the words, "* * * Duplin County Airport * * *", and substituting for them the words, "* * * P.B. Raiford Airport * * *."

Meridian, MS—Amended

By deleting the words, "* * * Lauderdale RBN * * *", and substituting for them the words, "* * * Savoy RBN * * *."

Moultrie, GA—Amended

By deleting the words, "* * * Spence AF Auxiliary Field * * *", and substituting for them the words, "* * * Spence Field * * *."

Oxford, NC—Amended

By deleting the words, "* * * Oxford-Henderson Airport * * *", and substituting for them the words, "* * * Henderson-Oxford Airport * * *."

Picayune, MS—Amended

By deleting the words, "* * * Picayune-Pearl River Airport * * *", and substituting for them the words, "* * * Picayune-Pearl River County Airport * * *."

Raleigh, NC—Amended

By deleting the words, "* * * Leesville RBN * * *", and substituting for them the words, "* * * Leevy RBN * * *."

Reidsville, NC—Amended

By deleting the words, "* * * Shiloh Airport * * *", and substituting for them the words, "* * * Rockingham County-Shiloh Airport * * *."

Sanford, NC—Amended

By deleting the words, "* * * Sanford Municipal Airport * * *", and substituting for them the words, "* * * Sanford-Lee County Brick Field * * *."

Shelbyville, TN—Amended

By deleting the words, "* * * Bomar Field * * *", and substituting for them the words, "* * * Bomar Field-Shelbyville Municipal Airport * * *."

Toccoa, GA—Amended

By deleting the words, "* * * Toccoa Airport * * *", and substituting for them the words, "* * * Toccoa-R.G. LeTourneau Field * * *."

Wetumpka, AL—Amended

By deleting the words, "* * * Wetumpka Airport * * *", and substituting for them the words, "* * * Wetumpka Municipal Airport * * *."

Wilson, NC—Amended

By deleting the words, "* * * Wilson RBN * * *", and substituting for them the words, "* * * Jambe RBN * * *."

(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 September 21, 1982.

S. Oberlander,

Acting Director, Southern Region.

[FR Doc. 82-27815 Filed 10-8-82; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 81-AWA-18]

Alteration of VOR Federal Airways V-175, V-178, and V-304

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes certain alternate VOR Federal Airways and renumbers other alternate airway segments in the central part of the U.S. This action reduces chart clutter by eliminating airways that are no longer needed for air navigation and also supports International Civil Aviation Organization (ICAO) agreement to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: December 23, 1982.

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:

History

On August 12, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke segments of V-178N and V-178S between Farmington, MO, and Cunningham, KY, and V-304 between Liberal, KS, and Borger, TX, and renumber V-175W between Vichy, MO, and Hallsville, MO (47 FR 35000). This action will reduce chart clutter by eliminating those airways that are no longer needed for flight planning or Air Traffic Control (ATC). Other alternate airways are renumbered in support of our commitment to ICAO to phase out alternate airway descriptions from the National Airspace System. During the comment period it was determined that V-178N between Farmington, MO, and Cunningham, KY, should be retained, therefore, this segment has been renumbered. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received. Except for editorial changes, and except for the renumbering of V-178N as discussed above, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes V-178S between Farmington, MO, and Cunningham, KY, and V-304 between Liberal, KS, and Borger, TX, and renumbers V-175W between Vichy, MO, and Hallsville, MO, and V-178N between Farmington, MO, and Cunningham, KY.

Discussion of Comments

Mr. Chuck Pingel, Chief Pilot of Farmington Airmotive, objected to the proposal. Mr. Pingel expressed concern that the revocation of V-178N and V-178S between Farmington, MO, and Cunningham, KY, would divert en route traffic over Cape Girardeau, MO, VOR causing delays to en route traffic and to IFR aircraft arriving/departing the Cape Girardeau Airport. After careful analysis of the traffic flow patterns through the Cape Girardeau area the Federal Aviation Administration (FAA) determined that no significant increase in enroute traffic over Cape Girardeau would occur as a result of this action. However, to insure operational flexibility, it was decided that a north bypass airway should be retained. Therefore, V-178N has been retained and renumbered as V-540.

List of Subjects in 14 CFR Part 71

Federal airways.

Adoption Of The Amendment

Accordingly, pursuant to the authority delegated to me § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.M.T., December 23, 1982, as follows:

1. V-175 [Amended]

By deleting the words ", including a west alternate via INT Vichy 321° and Hallsville 183° radials" and "The airspace at and above 8,000 feet MSL from 43 miles northwest of Malden to Vichy is excluded during the time that the Meramec Military Operations Area is activated by NOTAM. The airspace below 8,000 feet MSL between lat. 37°10'00"N., lat. 37°55'00"N., is excluded during the time that the Ozark MOA is activated by NOTAM."

2. V-178 [Amended]

By deleting the words "From Vichy, MO;" and substituting for them the words "From Hallsville, MO; INT Hallsville 183° and Vichy, MO, 321° radials; Vichy;" and by deleting the words "including a north alternate from Farmington to Cunningham via INT Farmington 115° and Cunningham 306° radials; and also a south alternate from Farmington to Cunningham via INT Farmington 145° and Cunningham 276° radials;" and "The airspace at and above 8,000 feet MSL between Vichy and Farmington is excluded during the time that the Meramec Military Operations Area is activated by NOTAM."

3. V–304 [Amended]

By deleting the words", including a W alternate via INT Borger 354° and Liberal 234° radials"

4. V–540 [New]

By adding "V–540 from Cunningham, Ky; INT Cunningham 306° and Farmington, MO, 115° radials; to Farmington."

(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, D.C., on Oct. 4, 1982.

John W. Baier,

Acting Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 82–27999 Filed 10–8–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 81–AWA–16]

Alteration of VOR Federal Airways V–50, V–71, V–73, V–88, and V–74

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes certain alternate VOR Federal Airways and renumbers other alternate airway segments in the central part of the U.S. This action helps reduce chart clutter by eliminating airways that are no longer needed for air navigation and supports our commitment to the International Civil Aviation Organization (ICAO) to phase out alternate airway descriptions from the National Airspace System.

EFFECTIVE DATE: December 23, 1982.

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:

History

On August 12, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke segments of alternate VOR Federal Airways V–50S and V–74N and renumber segments of V–73N, V–74N, V–74S, V–71W, and V–88S in the central part of the U.S. (47 FR 34999). The revocation of these alternate airway segments which are no longer needed for air navigation will reduce chart clutter. Other alternate airway segments have been renumbered in accordance with ICAO agreement. During the comment period it was determined that V–74N between Pioneer City, OK, and Tulsa, OK, should be retained, therefore, this segment has been renumbered. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and except for the retention of a segment of V–74N as discussed above, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70–3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes V–50S between Pawnee City, NE, and St Joseph, MO; V–74N between Little Rock, AR, and Jackson, MS, and between Ft. Smith, AR, and Tulsa, OK, and V–88S between Vichy, MO, and the STEME INT, and renumbers V–73E between Salina, KS, and Wichita, KS; V–74N between Little Rock, AR, and Ft. Smith, AR, and between Tulsa, OK, and Pioneer, OK; V–74S between Little Rock, AR, and Pioneer City, OK, and V–71W between Hot Springs, AR, and Springfield, MO, and extends V–256 from Pioneer City, OK, to Tulsa, OK.

List of Subjects in 14 CFR Part 71

Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., December 23, 1982, as follows:

V–50 [Amended]

By deleting the words "including a S alternate from Pawnee City to St. Joseph via INT Pawnee City 122° and Kansas City, MO, 310° radials, and INT Kansas City 310° and St. Joseph 178° radials;" and "The airspace at and above 10,000 feet MSL from Quincy to Capital is excluded during the time that the Howard MOA is activated by NOTAM. The airspace within the Lincoln MOA is excluded during the time that the MOA is activated by NOTAM.

V–61 [Amended]

By deleting the words ", to Pawnee City, NE, excluding the airspace within the Lincoln MOA during the time that the MOA is activated by NOTAM." and substituting for them the words "; Pawnee City, NE; to INT Pawnee 126° and St. Joseph, MO, 178° radials."

V–65 [Amended]

By deleting the words "From the INT Kansas City, MO, 310° and St. Joseph, MO, 178° radials" and substituting for them the words "From the INT Kansas City, MO, 307° and St. Joseph, MO, 178° radials"

V–71 [Amended]

By deleting after Springfield, MO, the words ", including a W alternate from Hot Springs to Springfield via Razorback, AR, excluding the airspace between the main and this W alternate" and "The airspace within the O'Neill NOA is excluded during the time that the MOA is activated by NOTAM."

V–527 [New]

By adding "V–527 From Hot Springs, AR; Razorback, AR; Springfield, MO."

V–73 [Amended]

By deleting the words ", including an east alternate from Wichita to Saline via INT Wichita 356° and Salina 169° radials"

V–74 [Amended]

By deleting the words ", including a N alternate via INT Pioneer 094° and Tulsa 319° radials" and ", including a N alternate via INT Tulsa 087° and Fort Smith 318° radials and a S alternate from Pioneer to Fort Smith via Okmulgee, OK" and ", including a N alternate and also a S alternate via INT Fort Smith 133° and Little Rock 278° radials" and ", including a N alternate via INT Little Rock 137° and Pine Bluff 006° radials" and after Greenville, MA ", including a N alternate"

V–532 [New]

By adding "V–532 From Little Rock, AR; INT Little Rock 278° and Fort Smith, AR, 133° radials; Fort Smith; Okmulgee, OK; Pioneer, OK; Wichita, KS; INT Wichita 356° and Salina, KS 169° radials; to Salina."

V–534 [New]

By adding "V–534 From Little Rock, AR; INT Little Rock 308° and Fort Smith, AR, 097° radials; Fort Smith."

V–88 [Amended]

By deleting after Vichy, MO, the words, ", including a south alternate from INT Springfield 058° and Forney (AAF), MO, 266° radials, Forney (AAF), INT Forney (AAF) 046° and Vichy 216° radials" and ", excluding that portion within R–4501A, R–4501B, R–4501C and R–4501D during their time of activation" and "The airspace at the above 8,000 feet MSL between Vichy and the INT Vichy 091° and St. Louis, MO, 171° radials is excluded during the time that the Meramec Military Operations Area is activated by NOTAM."

V–256 [Amended]

By inserting after the word "From" the words "Tulsa, OK; INT Tulsa 319° and Pioneer City, OK, 094° radials;"

(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 frequency 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, D.C. on October 1, 1982.

John W. Baier,

Acting Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 82–27998 Filed 10–8–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 82–ANM–6]

Alteration of Restricted Area, Fort Carson, CO, Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the description of Restricted Area R–2601 Fort Carson, CO, published in the **Federal Register** on September 7, 1982 (47 FR 39143). The description of R–2601 failed to include a portion of the boundary which included "Colorado Highway 115" and this action corrects that omission.

EFFECTIVE DATE: October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, 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.

List of Subjects in 14 CFR Part 73

Restricted area.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 82–24186 was published on September 7, 1982 (47 FR 39143), that eliminated the boundary between R–2601 and R–2602 and redesignated both Restricted Areas as R–2601. An error was noted in the description of R–2601 and this action corrects that mistake.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 82–24186, as published in the **Federal Register** on September 7, 1982, is corrected as follows:

Under "Boundaries"

Delete the last line "thence to point of beginning" and substitute "thence northeast along Colorado Highway 115, to point of beginning."

(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, D.C., on October 1, 1982.

John W. Baier,

Acting Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 82–27997 Filed 10–8–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 125

[Docket No. 23381; Amendment 125–4]

Delay of Part 125 Applicability to Part 129 Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This amendment to the Federal Aviation Regulations extends the date from January 1, 1983, to September 1, 1984, for foreign air carriers holding Part 129 operations specifications to certificate and comply with Part 125 of the Federal Aviation Regulations. Since the FAA has an active rulemaking project which includes a study of possible changes to Part 129, this action is necessary to avoid requiring foreign air carriers to comply with rules which may be revised by the FAA in the near future.

DATES: Effective date of this amendment is Oct. 12, 1982.

Comments must be received on or before Nov. 12, 1982.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 23381, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Perkins, Operations Branch (AFO–820), General Aviation and Commercial Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426–8194.

SUPPLEMENTARY INFORMATION:

Background

Part 125 includes, in the applicability under § 125.1(e), a deferred compliance date of January 1, 1983, for foreign air carriers holding operations specifications issued under Part 129. As stated in the preamble to the adoption of Part 125 (45 FR 67214; October 9, 1980), this deferred compliance date was included because the agency was considering a regulatory project to revise Part 129, and it would not have been appropriate to subject foreign air carriers to Part 125 requirements until the agency could determine the proper

action on Part 129. Various revisions to Part 129 are now under active consideration. A rulemaking project is underway at this time, but the FAA foresees that this project and any subsequent rule changes will not be completed until after the compliance date of January 1, 1983.

Foreign air carriers operating U.S.-registered aircraft have already begun to query the FAA concerning the status of the above-mentioned rulemaking project and the necessity for any action on their part. If the January 1, 1983, compliance date is not changed, these carriers would have to begin certification procedures now to meet that compliance date. Therefore, the agency has decided to extend the compliance date to September 1, 1984.

Since the deferred compliance date of January 1, 1983, in § 125.1(e) applies only to foreign air carriers holding operations specifications issued under part 129, the extension of that date applies only to those operators. Other foreign citizen operators of U.S.-registered airplanes covered by Part 125 remain subject to that part.

Need for Immediate Adoption

The FAA is currently considering a rulemaking project to revise Parts 129 and 125 with regard to foreign air carriers. The present date for these carriers to comply with Part 125 for operation of U.S.-registered airplanes will be reached before that rulemaking project is completed. The FAA recognizes an urgent need to amend § 125.1(e) to extend the compliance date and defer imposing Part 125 requirements on these carriers until this rulemaking action is completed. Not adopting this amendment immediately would unnecessarily impose a burden, both monetarily and in terms of resource utilization, on the FAA and the concerned foreign air carriers. Therefore, I find that notice and public procedure are impracticable and contrary to the public interest. In addition, since this amendment relieves a restriction, I find that good cause exists for making this amendment effective in fewer than 30 days. However, interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address specified above. All communications received on or before November 12, 1982, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Index

List of Subjects in 14 CFR Part 125

Aircraft, Airplanes, Hours of work, Airports, Air traffic control, Airworthiness, Flammable materials, Cargo, Airmen, Pilots, Drugs, Narcotics, Hazardous materials, Handicapped, Children, Infants, Smoking, Air transportation, Airspace, Chemicals.

Adoption of the Amendment

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

§ 125.1 [Amended]

Accordingly, § 125.1(e) of the Federal Aviation Regulations (14 CFR 125.1(e)) is amended effective October 12, 1982 by removing the date "January 1, 1983," and substituting the date "September 1, 1984," in place thereof.

(Sections 313, 601 through 610, and 1102, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421 through 1430, and 1502); Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—By extending a compliance date, this amendment allows foreign air carriers regulated by Part 129 to continue operating their U.S.-registered airplanes under that part. Thus, for the period of the extension, there is no change in their present regulatory status. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed above, it also has been determined that the anticipated economic impact is so minimal that no regulatory evaluation is necessary.

Issued in Washington, D.C., on October 5, 1982.

J. Lynn Helms,

Administrator.

[FR Doc. 82-28001 Filed 10-8-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 372

General License GTE and Project License: Amendments to the Export Administration Regulations

AGENCY: Office of Export Administration International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations by making the following changes:

(a) The first sentence of § 371.22(c)(2)(iii) is revised to clarify the intent of this provision regarding General License *GTE*. If taken out of context, this sentence could be interpreted to have a meaning opposite to the one intended.

(b) Sections 372.11 (d)(2) and (e)(6) are amended by removing references to the Project License. These sections currently state that export applications for a Project License may include different processing codes. However, there is no requirement in § 373.2 of the Export Administration Regulations for including *any* processing code on an application for a Project License.

(c) In addition, this document gives notice of an error in the "Substance of the Regulations" section of a rule (relating to simplification and clarification of Export Administration Regulations) published in the **Federal Register** of May 26, 1982 (47 FR 22941–22944).

DATE: This rule is effective October 12, 1982. Public comments are welcome on a continuing basis.

ADDRESS: Written comments (six copies when possible) should be sent to: Richard J. Isadore, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1979, 44 U.S.C. 3501 *et seq.*

3.This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

In addition, this document gives notice of an error in the "Substance of the Regulations" section of a rule published in the **Federal Register** of May 26, 1982 (47 FR 22941–22944). One paragraph of that section read as follows—

Section 375.3 on International Import Certificates and Delivery Verification Certificates is amended to show that the government issuing the Certificate must be the government of the country of ultimate destination, and subsection (a), Scope, is revised for clarity.

However, the Office of Export Administration wishes to make clear that the limitation quoted above does *not* apply to triangular transactions (commodities not entering the U.S.). See § 368.2(a)(8) for details.

List of Subjects in 15 CFR Parts 371 and 372

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 371 [AMENDED]

1. The first sentence of § 371.22(c)(2)(iii) is revised to read as follows:

§ 371.22 General license GTE; temporary exports.

* * * * *

(c) Exceptions * * *

(2) * * *

(iii) Commodities listed in Supplement No. 1 to Part 373, except that commodities identified in the footnotes thereto as available for shipment to certain countries under the Distribution License procedure may be shipped to those same countries under General License GTE. * * *

* * * * *

PART 372 [AMENDED]

2. Sections 372.11(d)(2) and (e)(6) are revised to read as follows:

§ 372.11 Amending export licenses.

* * * * *

(d) Changes Requiring a New License Application * * *

(2) Addition of a commodity with a different processing Code from that on the original application.

* * * * *

(e) Changes That May Be Made By Amendment * * *

(6) Change in commodity—provided the Processing Code for any added commodity(ies) is identical to the one assigned to commodities on the existing license.

* * * * *

(Sections 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980))

Dated: September 10, 1982.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82-27824 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

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15 CFR Parts 379 and 399

Clarification of Restrictions on General License GTDR, and Amendments to General License GTDR and to CCL entry 5597B, Polygraphs

AGENCY: Office of Export Administration International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The restrictions on using General License *GTDR* (technical data under restriction), § 379.4(d) (8) *of the Export Administration Regulations*, are clarified to state that technical data relating to infrared airborne detection and tracking equipment designed for military or space application are under the licensing jurisdiction of the Office of Munitions Control, Department of State. This is already clearly stated in Supplement No. 1 to § 399.1, ECCN 1502A. Also, this regulation makes minor footnote changes to § 379.4(e), General License GTDR, and to Commodity Control List Entry 5597B, Polygraphs, in the *Code of Federal Regulations*. These changes have already been made in the *Export Administration Regulations*.

DATE: This rule effective October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–5247 or 377–4811).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose any new information collection burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 379

Exports, Science and technology.

15 CFR Part 399

Exports.

Accordingly, Part 379 and Supplement No. 1 to § 399.1 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. Section 379.4(d)(8) is revised to read as follows:

§ 379.4 General license GTDR: Technical data under restriction.

* * * * *

(d) Restrictions Applicable to All Destinations Except Canada * * *

(8) Certain airborne multispectral infrared detection and tracking equipment (infrared scanners and their associated technology designed for military or space application remain under the export licensing jurisdiction of the Office of Munitions Control, Department of State);

* * * * *

2. The first sentence of § 379.4(e) is amended by adding a footnote after "the direct product" and before "of the data" that reads as follows:

The term "direct product," as used in this paragraph, is defined to mean the

immediate product (including processes and services) produced directly by the use of the technical data.

3. Supplement No. 1 to § 399.1, ECCN 5597B, is amended by revising footnotes 1 and 2 to read as follows:

Export control commodity number and commodity description	Unit	Validated license required	GLV $ value limits T&V	Processing code	Reason for control
5597B [1] Polygraphs * * *.....	[2]	PQSTVWYZ [1]	O	EE	5

[1] A validated license is *not* required for export of these commodities to Australia, Belgium, Denmark, France, the Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Turkey, and the United Kingdom.
[2] Report instruments and equipment in "number."

(Section 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. § 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Order 41–1 (45 FR 11862, February 22, 1980) and 41–4 (45 FR 65003, October 1, 1980))

Dated: August 23, 1982.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82–27823 Filed 10–8–82; 8:45 am]

BILLING CODE 3510–25–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C–3066]

Godfrey Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceedings and modifies the Commission's order issued on May 14, 1981 (46 FR 29458; June 2, 1981) by modifying Paragraph I(G) of the order to relieve respondent from the obligation of divesting a specified retail grocery store.

DATES: Final Order issued May 14, 1981. Modifying Order issued September 28, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/CC, Selig S. Merber, Washington, D.C. 20580, (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of Godfrey Company, a corporation. Codification appearing at 46 FR 29458 remains unchanged.

List of Subjects in 16 CFR Part 13

Grocery stores.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

The Order Modifying Cease and Desist Order Issued May 14, 1981 is as follows:

In the matter of Godfrey Company, a corporation. Order Modifying Cease and Desist Order Issued May 14, 1981.

The Federal Trade Commission having considered respondent Godfrey Company's petition filed on July 8, 1982, to reopen this matter and to modify the consent order to cease and desist issued by the Commission on May 14, 1981, and having determined that reopening and modification of the order is warranted:

It is ordered that this matter be, and it hereby is reopened and that Paragraph I(G) of the Commission's order be and it is hereby modified to read as follows:

(G) The "disposition stores" means the following Godfrey ("G") stores and Jewel ("J") stores:

1. G–427 (3045 S. 13th St., Milwaukee, WI);
2. G–810 (3939 S. 76th St., Milwaukee, WI);
3. J–1201 (1201 N. 35th St., Milwaukee, WI); and
4. J–729 (729 S. Layton Blvd., Milwaukee, WI).

By the Commission.

Issued: September 28, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82–27812 Filed 10–8–82; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–19093]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules governing delegation of authority in order to allow the Director of the Division of Market Regulation to approve the Municipal Securities Rulemaking Board's ("MSRB") selection of public members to serve on the MSRB.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Howard L. Kramer, Esq., Division of Market Regulation, (202) 272–2411.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today announced the amendment, effective upon publication in the **Federal Register**, of its rules under the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.* as amended) governing delegation of authority to the Director of the Division of Market Regulation (17 CFR 200.30–3). The amendment authorizes the Director of the Division of Market Regulation to approve public members of the MSRB pursuant to Section 15B(b)(2)(B) of the Act.

Discussion

Section 15B(b)(2)(B) of the Act requires that public members nominated and elected to serve on the MSRB be approved by the Commission to assure that they are not associated with any broker, dealer, or municipal securities dealer and that at least one public member represents investors in municipal securities and one represents issuers of municipal securities. Accordingly, since 1975, when the MSRB was first created, the staff of the Division of Market Regulation regularly has reviewed the materials submitted by the MSRB to determine whether the public members selected by the MSRB comply with the requirements of the Act. In addition, the Commission independently has reviewed staff recommendations with respect to each such public member so selected. Nevertheless, the Commission has never found it necessary to disapprove a MSRB selection. Accordingly, in light of this history of compliance by the MSRB, the Commission believes it is appropriate to delegate to the staff the authority to review, and approve where appropriate, the MSRB's selections.

The Commission finds that there will be no burden on competition imposed by the amendment. The Commission also finds that the foregoing action relates solely to agency management and personnel and, accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. § 553) are not necessary. This action, taken pursuant to 15 U.S.C. 78d–1, as amended,

becomes effective immediately on publication in the **Federal Register.**

List of Subjects in 17 CFR Part 200

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

Text of Amendment

The Securities and Exchange Commission, pursuant to the Act, and particularly sections 2, 15B and 23 thereof (15 U.S.C. §§ 78b, 78o–4 and 78w), and the Delegation of Functions Act, 15 U.S.C. § 78d–1, hereby adopts an amendment to § 200.30–3(a).

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

The Commission hereby amends paragraph (a) of § 200.30–3 of Title 17, Chapter II by adding new paragraph (a)(40) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a)* * *

(40) Pursuant to Section 15B(b)(2)(B) of the Act, 15 U.S.C., § 78o–4(b), to review and, where appropriate, approve the selection by the Municipal Securities Rulemaking Board ("Board") of public representatives to serve on the Board.

* * * * *

By the Commission.

Shirley E. Hollis

Assistant Secretary.

September 29, 1982.

[FR Doc. 82–28025 Filed 10–8–82; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 211

[Release No. SAB–47A]

Staff Accounting Bulletin No. 47A

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin; correction.

SUMMARY: This Staff Accounting Bulletin corrects a numerical error in previously issued Staff Accounting Bulletin No. 47 concerning the application of the Commission's rules on accounting for mineral property conveyances by companies using the full cost method of accounting for oil and gas producing activities.

DATE: September 29, 1982.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Rader or John W. Albert (202–272–2130), Office of the Chief Accountant, or James W. Ford, Jr., (202–272–2553), Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: September 29, 1982.

George A. Fitzsimmons,

Secretary.

Staff Accounting Bulletin No. 47A

The staff hereby revises Question 7 of topic 12–D–4 to replace Case V as presented in Staff Accounting Bulletin No. 47 with a new Case V example.

Topic 12: Oil and Gas Producing Activities

* * * * *

D. *Application of Full Cost Method of Accounting*

* * * * *

4. Mineral Property Conveyances and Related Transactions

* * * * *

Question 7:

* * * * *

Case V:

The prospect is sold as in Case IV; however, the capital cost contingency associated with the registrant's minimum remaining required capital investment in the partnership is $30,000.

Conclusion

The amount of gain to be recognized as income is as follows:

	Associated with	
	Sale to third parties	Sale to partnership
Allocation of excess proceeds	$112,500	$37,500
Less:		
A Estimated completion costs to be incurred	(50,000)	(12,000)
B Capital cost contingency		(30,000)
	62,500	(4,500)
Gain recognized as income		58,000
Amount to be credited to registrant's full-cost pool		92,000
		150,000

In this case, the proceeds related to the sale to the partnership are inadequate to cover total costs including costs yet to be incurred. Thus, gain may be recognized only to the extent that total proceeds exceed total costs for the entire lease. The remaining excess of proceeds over book cost should be credited to the full cost pool. As additional costs are incurred, they should be charged to the pool so that ultimately the net unrecovered costs will be charged to the pool.

[FR Doc. 82–28015 Filed 10–8–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 141

[Docket No. RM82–4–000; Order No. 264]

Final Rule To Amend Monthly Report of Cost and Quality of Fuels for Electric Plants: Form No. 423

Issued October 5, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: By this rule, the Federal Energy Regulatory Commission (Commission) revises Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants" and the related regulations at 18 CFR 141.61. In revising Form No. 423, the Commission has raised the threshold that triggers the filing of the form, eliminated the requirement for non-steam-electric facilities to file the form, amended the instructions in the form in several respects, and reduced the number of required copies of the form. These revisions are made as part of the Commission's ongoing program to review all of its reporting requirements and to eliminate those requirements that are not necessary to the performance of the Commission's responsibilities.

DATE: The final rule is effective November 12, 1982 for filings made on or before the 45th day after the reporting period beginning January, 1983.

ADDRESSES: Copies of FERC Form No. 423 are available at: U.S. Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., FERC Form No. 423; Room BG–024, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Alex Gakner, Federal Energy Regulatory Commission, Office of Electric Power Regulation, 825 North Capitol Street, NE., Room 507–H RB, Washington, D.C. 20426, (202) 376–9369.

SUPPLEMENTARY INFORMATION:

Issued: October 5, 1982.

In the matter of revision of monthly report of cost and quality of fuels for Electric Plants: Form No. 423; Docket No. RM82–4–000; Order No. 264.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising Form No. 423, "Monthly Report of Cost and Quality of Fuels for Eelctric Plants"[1] and revising the related regulations at 18 CFR 141.61. These revisions are part of the Commission's ongoing program to review and evaluate all of the information it collects for regulatory purposes and to eliminate any unnecessary reporting requirements. This rulemaking reduces by about 17 percent the number of electric utility plants that must gather, record, and submit the data to the Commission.

II. Background

The Form No. 423, which was initiated in 1972 by the Commission's predecessor agency, the Federal Power Commission (FPC),[2] provides monthly information on the availability, cost, and quality of fossil fuels for electric utilities pursuant to the Federal Power Act.[3] The information is used by the Commission to evaluate fuel quality and costs in electric rate cases, and also to evaluate the fuel purchase practices of electric utilities pursuant to the requirements of section 205(f) of the Federal Power Act (16 U.S.C. 824d(f)).[4] The information reported in Form No. 423 is also used by other federal agencies such as the Environmental Protection Agency, the Departments of Labor and Commerce, the Federal Reserve Board, and the General Accounting Office in the discharge of their official duties.

On December 3, 1981, the Commission issued a Notice of Proposed Rulemaking to revise the Form No. 423 and the related regulations at 18 CFR 141.61 (46 FR 60214, December 9, 1981). The notice proposed the following revisions: (1) Raising the reporting threshold for electric power plants that must file the form from 25 MW of rated generating capacity to 50 MW; (2) providing that the minimum capacity requirement would be determined solely by reference to steam-electric facilities rather than combustion turbine, internal combustion and steam-electric facilities; (3) amending specific instructions in the form to clarify the data requirements and to provide a more detailed statement of the utilities' activities; and (4) reducing the number of copies of the form that are required to be filed from six to four. The Commission estimated that these revisions would result in a net decrease of approximately 17 percent in the number of utility plants which must gather the data requested in Form No. 423, record it, and submit it to the Commission.

II. Analysis of Comments and Summary of Changes

In response to the Notice of Proposed Rulemaking, the Commission received fifty-five comments.[5] These comments were from nineteen investor-owned utilities; the Edison Electric Institute; six federal, municipal or cooperative electric utilities; the Rural Electrification Administration; nine state utility commissions; fourteen coal producers or entities interested in coal production; and five miscellaneous users of the data provided in Form No. 423. Twenty-nine of the commenters expressed general support for the proposed revisions to the form and for the efforts by the Commission to reduce the reporting burden on electric utilities. However, several negative comments on various aspects of the form were filed by a variety of commenters. Investor-owned utilities commonly objected to the collection of information that they said was "additional" to those items already collected in the form,[6] while the state commissions generally requested the collection of even more detail in the form than had been proposed in the notice. The specific concerns of commenters are summarized as follows:

A. Scope of the Requirement and Procedural Matters

1. *Increase in the reporting threshold.* Six commenters expressed support for the proposal to raise the reporting threshold from 25 MW of rated generating capacity to 50 MW. Eight of the state commissions stated that they preferred the current reporting threshold. One commenter objected to raising the threshold because the information collected from the smaller generating plants is useful in assessing their performance. Three utility companies commented that raising the threshold will not lessen their reporting burden.

In response to the request by the state commissions for the retention of the current reporting threshold, the Commission has determined that, on balance, the reporting threshold should be raised. The Commission does not find the collection of data from generating plants smaller than 50 MW to be necessary to its regulatory functions and cannot justify its continued collection and corresponding burden on the affected utilities only because other

[1] FERC Form No. 423 (attached as the Appendix to this final rule) will not be printed in the Federal Register. Copies of this final rule, including the appendix, are available at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Room 1000, Washington, D.C. 20426, (202) 357–8055.

[2] FPC Docket No. R–432, "Monthly Report of Cost and Quality of Fuels for Steam-Electric Plant", Order No. 453, issued June 7, 1972 (37 FR 11860, June 15, 1972); revised: FPC Docket No. R–432(A), Order No. 512, issued September 12, 1974 (39 FR 34030, September 23, 1974).

[3] The Commission is authorized to regulate electric utilities engaged in interstate commerce under Part II of the Federal Power Act (16 U.S.C. 792–828c). This authority was transferred to the Commission from the FPC under Section 402 of the Department of Energy Organization Act (42 U.S.C. 7172(b)). The Commission collects information in the Form No. 423 under sections 304 and 311 of the Federal Power Act pursuant to a delegation of authority from the Secretary of Energy to the Commission (Delegation Order No. 0204–1 (October 1, 1977)).

[4] Section 205(f) requires the Commission to periodically review fuel purchase practices and policies under automatic adjustment clauses in order to promote the efficient use of fuel and energy resources, and to evaluate the justness and reasonableness of rates charged by electric utilities.

[5] The commenters are as follows: Alabama Power Company; Carolina Power and Light Company; Commonwealth Edison Company; Consumers Power Company; Dayton Power and Light Company; Duke Power Company; Georgia Power Company; Mississippi Power and Light Company; New England Power Company; Northern States Power Company; Pacific Gas and Electric Company; Portland General Electric Company; Potomac Electic Power Company; Public Service Electric and Gas Company; Southern California Edison Company; Virginia Electric and Power Company; West Texas Utilities Company; Wisconsin Electric Power Company; Wisconsin Power and Light Company; Edison Electric Institute; Associated Electric Cooperative, Incorporated; Board of Public Utilities, City of McPherson, Kansas; Dairyland Power Cooperative; Department of Water and Power of the City of Los Angeles; Board of Water and Light Trustees of the City of Muscatine, Iowa; Salt River Project; Rural Electrification Administration; State of Florida Public Service Commission; Georgia Public Service Commission; State of Indiana Public Service Commission; Commonwealth of Kentucky Public Service Commission; Mississippi Public Service Commission; New Hampshire Public Utilities Commission; New York Public Service Commission; Public Staff of the North Carolina Utilities Commission; Public Service Commission of West Virginia; Binford-Nightengale, Inc., Coal Company; Carbon Energies Inc.; C. E. Brackett Coal Sales, Inc.; Coal Age International Corp.; Coal Marketronix; Coal Outlook; Coal Week; Fort Union Coal Mine; Halfway Coalyard, Inc.; Lucas Coal Company, Inc.; Massey Coal Sales Company, Inc.; National Coal Association; NERCO, Inc.; Eugene Mark Trisko (on behalf of Stern Bros., Inc.); Energy Economics Associates; Geological Survey of Wyoming; International Chemical Company; McGraw-Hill Publishing Company; and Teknekron, Inc.

[6] Two utilities argued that even the current form collects too many data. They said that the filing burdens represented by the inclusion of the so-called "additional" data requirements outweighed the benefits derived from collection of that information. In addition, another utility argued that the form is not useful for Commission regulatory purposes because the data reported therein are not accurate enough for a proper evaluation of utility fuel purchasing practices. The Commission has redesigned Form No. 423 to collect the information that it needs for the evaluation of fuel purchase practices, without requiring too much burden on the filing utilities. More specific data are properly collected on a case-by-case basis. In addition, the Commission notes that the "additional" data in the revised form are not new collections; they are clarifications of the current reporting requirements.

entities use the data. The Commission can request the information that it needs from these smaller entities on a case-by-case basis. The Commission also notes that if states need the information from utilities that are smaller than 50 MW or, for that matter, any other information that this Commission does not collect in the form, those states may collect the information under their own authority from utilities within their jurisdiction. Although the reduced threshold may not lessen the burden of all utilities, it should reduce the burden for plants that have a rated generating capacity of less than 50 MW. Of course, the Commission realizes that some utilities may realize a greater reduction in burden than others because of the variety in the types and sizes of generating facilities.

Two commenters advocated raising the threshold. One suggested an increase to 80 MW; the other advocated a threshold of 100 MW. The Commission will not raise the threshold further in this rulemaking. The Commission believes the new threshold should result in the collection of data from a sufficient number of plants to provide the Commission with adequate information for its regulatory functions, such as analyzing rate filings. A higher threshold may result in the elimination of more information than is needed for responsible decisionmaking.

Several commenters voiced concern about the calculation of the threshold. In particular, they stated it was unclear as to (1) whether the reporting requirement was on a per plant or per unit basis, and (2) whether data for combustion turbine or internal combustion units still had to be reported even though they are not included in calculating the 50 MW filing requirement.

The instructions provide that Form No. 423 must be filed for *plants* which possess a *steam-electric generating capacity* of 50 MW or greater. Thus, the form no longer requires information on fuel purchases for combustion turbine or internal combustion engine use, or information about plants with less than 50 MW steam-electric capacity. However, to clarify this intention, the instructions for Form No. 423 are revised by underlining the words as indicated above.

2. *Elimination of non-steam generating power.* One commenter favored the Commission's proposal to eliminate non-steam generating power information from the form. Three commenters, however, objected to this elimination. They said that this requirement should be retained because non-steam capacity is important in serving peak loads and in meeting emergencies, and because there are significant regional variances in the use of non-steam generating power which should be reported to the Commission. One of these commenters said that the eliminated information could not be obtained in individual rate proceedings as the Commission stated in its notice. According to this commenter, it would be difficult for the Commission to obtain fuel cost data from utilities which were not the subject of a particular rate case, and, as a result, important comparisons of fuel costs among the plants of different utilities would be impossible.

The Commission does not believe that the fuel used for peak loads is of such significance that the Commission should burden utilities with the report of this information in Form No. 423. For example, oil purchases in 1981 for peaking purposes were only 2.4 percent of total oil purchases (on a Btu basis); gas purchases in 1981 for peaking purposes were 3.9 percent of the total gas purchases; and total fuel purchases for peaking purposes were only 1.1 percent of total fuel purchases.

One commenter questioned whether plants with combined-cycle units (i.e., those units that burn fuel only by combustion turbine) would be required to file Form No. 423. The Commission does not require these plants to file the form.

3. Accuracy and timeliness of the report, and number of copies. Nine commenters requested that the Commission monitor more closely the utilities' timeliness in filing the Form No. 423 and their accuracy in reporting information on the form, in order to improve the overall reliability of the data collected in the form. The Commission notes that the instructions require the submission of Form No. 423 within 45 days after the end of the report month and provide that the failure to do so may result in the imposition of civil or criminal sanctions or both.[7] The Commission reminds utilities of their obligations to report data in Form No. 423 within the specified time frame and of the penalties which may be incurred as a result of failure to comply with them.

While most utilities have reported no problems in meeting the 45-day deadline, two commenters complained that the 45-day reporting deadline was too short. They said required data frequently are unavailable when the report is due. The Commission will not extend the filing deadline. If data are not available in time for filing, a utility may file the Form No. 423 with the information it does have and submit an amended form later, when it acquires the remaining data.

B. Specific Data Requirements in Form No. 423

Six requirements or instructions in the form were discussed by the commenters: (1) Reporting of central storage facilities, (2) definition of "spot sales", (3) identification of the contract expiration date, (4) identification of the mine or broker, (5) disclosure of actual delivery price, and (6) identification of flame stabilization fuels.

1. *Reporting of central storage facilities.* Nine commenters expressed support for the Commission's proposal to treat central storage facilities as a plant. Five utilities stated, however, that this provision will cause misleading or duplicative reports; *i.e.*, one report would be made when the fuel is delivered to the central storage facility, and another, when the fuel is transferred from the central storage facility to the plant.

The Commission will continue to require the reporting of deliveries to central storage facilities. However, the Commission believes that reporting fuel deliveries to both a central storage facility and a generating plant is unnecessary. Therefore, the instructions to Form No. 423 are revised to require the reporting of only the initial receipt of deliveries into the facility.

In commenting on this aspect of the form, eight state commissions also recommended that the Commission require the reporting of the volume of fuel transferred from the storage facility to the generating plant, the value of the fuel, and the costs of transporting fuel from the facility to the plant.

The Commission cannot justify the reporting of this additional information because it is not essential to the Commission's review of fuel purchase practices. Therefore, the Commission will not impose the added burden associated with that data collection. However, as the Commission stated earlier, the state agencies are not precluded from exercising their own authority to collect this information from their jurisdictional utilities.

2. *Definition of "spot sales".* Eight state utility commissions and one other commenter favored the proposal to define "spot sales" as shipments under contracts of less than one year's duration. One utility supported a reporting exemption for short-term contracts but objected to the characterization of such contracts as "spot sales". The utility said that this

[7] Sections 304 and 316 of the Federal Power Act (16 U.S.C. 825c, 825o) provide the prohibitions and penalties, respectively, for violations of the Commission's regulations, including the requirement to file information with the Commission.

definition is inconsistent with the oil and gas industries' definition of the term "spot sales".

The Commission recognizes that the oil and gas industries' definition of "spot" sales is not necessarily the definition used by the coal industry, to which most "spot" sales as reported on the form will apply. However, the Commission has devised the definition for "spot" sales to be used only on this form, so as to collect consistent data from all entities filing the form.

3. *Identification of the contract expiration date.* A significant number of comments were made in response to the proposed addition to the form of the requirement to report the exact date of the expiration of a contract for deliveries of coal or oil (if the expiration is within twenty-four months of this report). Six commenters supported the requirement, stating that this provision would aid competition. The commenters stated that utilities frequently failed to report reliable contract data under the old requirement (to state "yes" or "no" in response to the question of whether a contract had expired). The commenters said that this requirement would assure that utilities filed accurate information respecting contract expirations.

Fourteen comments, primarily by utilities and coal producers, were filed in opposition to this new requirement. These commenters said a contract expiration date is unnecessary to the Commission's ratemaking responsibilities and the report of this information is burdensome to the reporting entities. In addition, the commenters said that this is confidential information, the reporting of which would create a competitive disadvantage for the utilities because suppliers who know a utility's contract expiration date could quote a higher than usual price to the utilities which need a new supply of fuel. The commenters said that the added costs of supplying this information will be passed on to the consumers.[8]

The Commission needs the contract expiration date to determine if contracts are reasonable on the basis of their duration, and this information is important to electric rate proceedings. With the knowledge of a specific contract date, for example, the Commission can determine if longer term contracts are more economical than the shorter term contracts. The Commission has found that, under the current requirement, many utilities fail to report that a contract has expired. Thus, the Commission is requiring a specific contract date to cause utilities to focus on this item and provide the correct information. It is not a burdensome requirement because utilities should know the duration of their supply contracts when the contract agreements are made.

The Commission does not believe that disclosure of the contract expiration date will have anticompetitive effects. In fact, the Commission responded to similar allegations of the anticompetitive nature of Form No. 423 data in Order No. 22 issued March 7, 1979.[9] There the Commission stated that there had been no showing by the utilities of actual injury by anticompetitive behavior as a result of the publication of Form No. 423 data (including the date of contract expiration, identity of fuel supplier, and actual price of fuel), nor that the collection of these data will lead to any injury due to anticompetitive behavior in any utility fuel market. Similarly, none of the commenters in this rulemaking has offered any evidence that disclosure of the contract expiration date will cause actual injury. Based upon the Commission's view of the current and projected fuel markets, there is no reason to believe that the disclosure of this information will cause an anticompetitive situation now, or in the foreseeable future.

The Commission also notes that the disclosure of this information could actually promote competition. This is because the suppliers' knowledge of a utility's expiration date may cause the suppliers to offer lower prices in order to secure a new fuel delivery contract from the utility, particularly during periods when supply exceeds demand.

Certain commenters misunderstood the proposal to require the reporting of expiration dates for all contracts. The Commission notes that the notice specified that this requirement only applied to contracts which expire within 24 months of the reporting months. In order to clarify this intent the Commission has revised the instructions to require the entry of the month and year of the expiration of contracts which will expire within 24 months.

4. *Identification of mine or broker.* Nine commenters supported the proposal to require the reporting of the name of the mine or the broker from which the coal was purchased because this information would assure more accurate reports of the delivery price of coal. They said the mine or broker could be contacted to verify the information that was reported on the form.

Fourteen comments, mostly from utilities and coal producers, were opposed to this requirement. As in the case of the requirement to report the contract expiration date, the commenters said that identification of a mine or broker is unnecessary to the Commission's responsibilities and burdensome to reporting companies, and that these disclosures create a competitive disadvantage for utilities and a correspondingly greater cost to the consumers.

The Commission finds these data essential for its analyses in electric rate cases. This requirement is not burdensome to utilities because they are allowed to report either the mine name (as is currently required) or the broker's name. Thus, for example, utilities could report the broker's name whenever the mine is not easily identified or when shipments were amassed by a broker from various sources. If anything, the addition of the alternative of reporting the mine or broker should ease the reporting burden for utilities, because they can simply report the name of their broker whenever it is difficult to determine the mine from which the coal came.

The Commission also does not believe that the requirement to report either the mine or the broker is anticompetitive. As with the requirement to identify the contract expiration date, there is no evidence that the report of a mine or broker will cause any anticompetitive behavior, or any injury. Indeed, none of the commenters showed harm resulting from the current, more limited requirement to report the mine name. Utilities, if they choose, could continue reporting the mine, if the other alternative is less appealing. Furthermore, the disclosure of the mine or broker could actually provide an incentive for suppliers to provide lower prices to utilities when they need new fuel supplies, thus enhancing competition rather than harming it.[10]

5. *Disclosure of actual delivery price.* Four public utility companies opposed the requirement to report the actual delivery price of fuel stating that this

[8] One commenter also questioned whether the requirement to report the contract expiration date included the report of single or "spot" purchase agreements. This requirement does not include the report of single purchase agreements because these agreements are not subject to the type of contracts for which most fuel purchases are made.

[9] "Order Denying Petition by Several Utilities to Limit Distribution of Information Collected on Form No. 423 and Terminating Rulemaking Proceeding." Docket No. RM77-2, issued March 7, 1979 (44 FR 21596, April 10, 1979).

[10] Certain commenters questioned the Commission's revisions to the requirement respecting the reporting of the county location of the coal mine. This was intended merely as a clarification of the current requirement, in order to provide more logical reporting of the data.

information is confidential and that its report will be anticompetitive and will result in higher fuel costs to their customers. Again, the Commission needs this information for its rate decisions. In addition, there is no evidence that the report of the actual delivery price will be anticompetitive or injurious in light of the current and projected fuel markets, any more than the report of the contract expiration date, or mine or broker will cause harm to the reporting entities.

6. *Identification of flame stabilization fuel.* One municipal utility supported the Commission's proposal to require a separate report of flame stabilization fuels in Form No. 423. Five investor-owned utilities, one cooperative utility, and one coal company opposed the proposal as unnecessary and unduly burdensome because flame stabilization fuels account for only about one or two percent of all fuels consumed by utilities.

The Commission believes that a separate report of flame-stabilization fuels should not create an additional reporting burden upon electric utilities. Flame stabilization fuels are simply one portion of the fuel supply for steam-electric generating stations that have been required to be reported by utilities in the old form. The requirement to report these fuels is merely a clarification of the present requirement designed to ensure that all utilities will report their fuel supply data consistently.

C. Requests for Additional Data

Several commenters requested that the form be expanded to collect additional data. These data pertained to reports of transportation costs and to coal reporting. Eleven commenters requested that transportation costs be reported separately from the actual fuel (product) costs instead of having them reported together. This would allegedly provide a means to determine if either of these costs is excessive or unreasonable and would allegedly be useful for comparisons among the various utilities. The commenters said that this reporting would not be burdensome to the utilities because the information is readily available. One of these commenters added that a separate report of fuel transportation costs would promote competition among coal companies by enhancing the flow of necessary price data among the companies. Two commenters noted that this Commission could also use fuel transportation data for its review of automatic fuel adjustment charges under section 208 of PURPA.[11]

Nine state utility commissions requested the inclusion of requirements to disclose the moisture content of coal and the mine seam from which the coal came, and individual reports of fuel received from the parent company and from its affiliated companies. Finally, one commenter requested that the form require that fuel shipments from electric utility-owned coal mines and gas fields be separately identified, and that coal that has been processed at a coal preparation plant also be identified.[12]

The Commission notes that, although these revisions may be valuable, on balance, their usefulness does not outweigh the increased reporting burden on utilities. However, the Commission may consider these suggestions in the future.

III. Summary of Changes

The Commission has adopted the changes to the new Form No. 423 that were proposed in the notice,[13] except as modified by the revisions in response to the comments. A copy of the revised form is attached as the Appendix. The Commission has also adopted the changes to its regulations at 18 C.F.R. § 141.61 that were proposed in the notice except for minor reorganizational changes.

IV. Certification of No Significant Economic Impact

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) requires certain statements, descriptions, and analyses of proposed and final rules that will have "a significant economic impact on a substantial number of small entities." Pursuant to section 605 of the RFA, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Virtually all electric utilities currently required to file the monthly report are large entities having annual operating revenues over $1 million. Moreover, this rule should reduce the filing burden on electric utilities because the revisions, such as increasing the threshold, eliminating the report of non-steam-electric generation and reducing the number of copies, will simplify the requirement.

[11] Section 208 amended section 205 of the Federal Power Act by adding paragraph (f) to that provision (16 U.S.C. 824g(f)). *See* n. 4, *above.*

[12] One utility company requested clarification of the instruction requesting the purchase price of fuel "F.O.B. plant". The company noted that its price, F.O.B. plant is different from the purchase price from the mine, and it was unsure of which price to report. The Commission intends to require the reporting of fuel prices "F.O.B. plant".

[13] See Part I of this final rule.

V. Effective Date

This final rule is effective November 12, 1982 for reports due 45 days after the reporting period beginning January 1983.

(Federal Power Act, 16 U.S.C. 792–828c; Public Utility Regulatory Policies Act, sections 2601–2645; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. No. 12009, 3 CFR 142)

List of Subjects in 18 CFR Part 141

Statement and reports (schedules).

In consideration of the foregoing, the Commission amends Form No. 423 as discussed above and as set forth in the Appendix, and amends Part 141 of Chapter I, Title 18 of the Code of Federal Regulations as set forth below, effective 30 days after publication in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 141 [AMENDED]

Section 141.61 is revised to read as follows:

§ 141.61 FERC Form No. 423, Monthly Report of Cost and Quality of Fuels for Electric Plants.

Every electric power producer having electric generating plants with a rated steam-electric generating capacity of 50 megawatts or greater during the reporting month must file with the Commission for each such plant an original and conformed copies of FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants" pursuant to the General Instructions set out in that form. Form No. 423 must be filed on or before the 45th day after the end of each reporting month, beginning with the reporting period of January, 1983.

[FR Doc. 82-28023 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Interim rule.

SUMMARY: The United States Information Agency (USIA) proposes to establish criteria for the lengths of availability of the J–1 visa used by certain alien physicians as exchange

visitors for graduate medical education or training.

The duration of an alien physician's participation in a program of graduate medical education or training for which the alien physician is coming to the United States is limited to the time typically required to complete such program. The length of time shall be determined by the Director of the United States Information Agency at the time of the alien physician's entry into the United States. The determination shall be based on criteria established in coordination with the Secretary of Health and Human Services. The criteria shall take into consideration the published requirements of the medical specialty board which administers such education or training program with certain overall exceptions.

DATES:

Effective date: This rule shall become final on January 1, 1983 unless sooner revoked or modified.

Comment date: Comments are due by November 15, 1982.

ADDRESS: Comments should sent to Richard L. Fruchterman, Assistant General Counsel (GC), United States Information Agency, Room 918, 1750 Pennsylvania Avenue, NW., Washington, D.C. 20547.

FOR FURTHER INFORMATION CONTACT: Richard L. Fruchterman, (202) 724–9055.

SUPPLEMENTARY INFORMATION:

Background

The International Communication Agency assumed from the Department of State overall responsibility for the Exchange-Visitor Program and all related procedures effective April 1, 1978, by Reorganization Plan No. 2 of 1977 and by Executive Order 12048 of March 27, 1978. Tne International Communication Agency has been redesignated the United States Information Agency (USIA) by section 303(a) of the United States Information Agency Authorization Act, Fiscal Years 1982 and 1983 (Pub. L. 97–241). Public Law 97–116 provides that an alien physician may remain in the United States for the time typically required to complete the medical education or training program for which he entered the United States.

E.O. 12291 Federal Regulation

USIA has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or price 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.

List of Subjects in 22 CFR Part 514

Exchange visitor program.

PART 514—EXCHANGE VISITOR PROGRAM

Part 514 of Chapter V, Title 22 of the Code of Federal Regulations is amended by amending § 514.13(a)(4) by revising paragraph (ii) and adding new paragraphs (iii), (iv), (v) and (vi) all to read as follows:

§ 514.13 Sponsor Obligations—specific.

(a) * * *

(4) * * *

(ii) The duration of the alien physician's participation in the program of graduate medical education or training for which the alien physician is coming to the United States is limited to the time typically required to complete such program. The duration shall be determined by the Director of the United States Information Agency at the time of the alien physician's entry into the United States. The determination shall be based on criteria which are established in coordination with the Secretary of Health and Human Services and which take into consideration the published requirements of the medical specialty boards in the latest edition of the Directory of Medical Specialists published for the American Board of Medical Specialties by Marquis Who's Who; except that—

(A) Such duration is further limited to seven years unless the alien physician has demonstrated to the satisfaction of the Director that the country to which the alien physician will return at the end of such specialty education or training has an exceptional need for the additional qualifications obtainable only by means of an extension of length of stay; or

(B) The alien physician may, once and not later than two years after the date the alien physician enters the United States as an exchange visitor or acquires exchange visitor status, change the alien physician's designated program of graduate medical education or training if the Director approves the change and the alien physician has made a written commitment to return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States and the government of the country of his nationality or last residence has provided a written assurance, satisfactory to the Secretary of Health and Human Services, that there is a need in that country for persons with the skills the alien physician will acquire in such education or training.

(iii)(A) Subject to the limitations contained in clause (A) of preceding paragraph (ii), the phrase "time typically required to complete such program" means a length of stay within the United States which is required to complete all necessary graduate medical education and training, which may enable the alien physician to meet the eligibility requirements for certification (but not actual certification) by an American specialty board. Except where specifically shown to be necessary for good cause, this period will not be extended beyond the training period to include the time necessary to take an examination required for certification by a specialty board. The Director may also authorize an extension of stay to include a period of supervised medical practice in the United States which may be required for certification by a specialty board.

(B) Alien physicians shall be permitted to undertake graduate medical education or training in a specialty or subspecialty program whose criteria are not published in the Directory of Medical Specialists if the criteria are certified to the Director and to the Educational Commission for Foreign Medical Graduates by the head of the cognizant component board of the American Board of Medical Specialties. The Director, for good cause shown, may grant an extension of authorized length of stay to an alien physician to repeat one year of clinical medical training.

(C) The alien physician must furnish the Attorney General each year with an affidavit (Form I–644) that attests the alien physician (1) is in good standing in the program of graduate medical education or training in which the alien physician is participating, and (2) will return to the country of his nationality or last residence upon completion of the education or training for which he came to the United States.

(iv) Alien physicians who entered the United States between January 10, 1978 and December 31, 1979 shall have their applications for subspecialty education under the specialty treated as within the aliens physicians' designated programs of graduate medical education or training. Alien physicians entering the United States during 1980 and 1981, may

make a change (as provided in subparagraph (ii)(B) above) within two years of their entry. Alien physicians who enter the United States after December 29, 1981 shall have their applications for subspecialty education or training treated as changes in their designated program of graduate medical education or training only if submitted within the first two years after entry into the United States.

(v) Alien physicians who entered the United States between January 10, 1978 and December 29, 1981 pursuant to the "substantial disruption waiver" provision of the law may elect to continue their graduate medical education or training in directly related subspecialties but must continue such education only at the same institution and only in a previously waived position. Any alien physician desiring to transfer into an unwaived position in a subspecialty must pass the National Board of Medical Examiners Part I and II Examinations or an equivalent examination as determined by the Secretary of Health and Human Services and meet all other requirements to obtain a J-1 visa.

(vi) The Educational Commission for Foreign Medical Graduates will serve as liaison between the medical specialty boards and the United States Information Agency.

(Pub. L. 97-116, 75 Stat. 527, 534, 535; 8 U.S.C. 1101(a)(15)(J); 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1182(a)(15)(J)), Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; Pub. L. 97-241, 96 Stat. 291)

Dated: October 4, 1982.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 82-28008 Filed 10-8-82; 8:45 am]

BILLING CODE 8230-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[Docket No. CRT 80-3]

1980 Adjustment of the Royalty Rate for Cable Systems

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal amends its rule establishing the rate of royalty payments for the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station by reducing to 18.35% the increase in the statutory royalty fees, to reflect differences in national monetary inflation and increases in average rates charged subscribers for the basic service of providing secondary transmissions.

DATE: Effective November 10, 1982.

FOR FURTHER INFORMATION CONTACT: Commissioner Thomas C. Brennan, Copyright Royalty Tribunal, 1111 20th St., NW., Room 450, Washington, D.C. 20036, 202-653-5175

SUPPLEMENTARY INFORMATION:

The Copyright Royalty Tribunal (Tribunal) published in the **Federal Register** of January 5, 1981 (46 FR 892-97) its final rule, effective February 4, 1981, adjusting the statutory fees established in 17 U.S.C. 111(d)(2)(B) to reflect differences in national monetary inflation and increases in average rates charged subscribers for the basic service of providing secondary transmissions. The Tribunal's determination was challenged on a number of issues in the United States Court of Appeals for the District of Columbia Circuit by the National Cable Television Association (NCTA) and by a coalition of "Copyright Owners". On September 10, 1982 the Court in *National Cable Television Association* v. *Copyright Royalty Tribunal.* (No. 81-1005) affirmed the decision with "one minor exception". The Court remanded the case to correct an "apparent mathematical error" in the formulation of the rate schedule.

On September 15, 1982 NCTA and the Copyright Owners filed with the Tribunal a Stipulation that the statutory fees should be increased by 18.35%. At a public meeting of the Tribunal on October 5, 1982 the Tribunal adopted a resolution amending the cable royalty rates, and establishing the Tribunal's position concerning the effective date of the rate adjustment and the awarding of interest.

The Tribunal has received extensive pleadings by the parties to this and other rate adjustment proceedings concerning the effective date of the rate adjustment when there has been an appeal of the Tribunal's final determination. The Copyright Owners in this proceeding have filed a Petition For Declaratory Relief (February 23, 1981) and a Supplement to Petition For Declaratory Relief (September 21, 1982). NCTA has submitted comments on these petitions.

In the 1980 cable royalty adjustment proceeding the Court of Appeals has affirmed an increase in the royalty rates by at least the percentage amount of the Stipulation. The parties to the Stipulation have undertaken to "agree to waive their rights to seek any further court review of the decision of the Court in *NCTA* v. *CRT*". In these circumstances, it would frustrate the periodic inflation adjustment procedures established by the Congress if cable operators did not now pay royalty fees at the adjusted rates, commencing with the effective date of the adjustment—the first accounting period of 1981. We have resolved that cable systems are obligated for payment of the royalty fees required by our determination as of the first accounting period of 1981. The November 10 effective date of this document does not alter the effective date of the rate adjustment.

Copyright Owners have requested the Tribunal to also rule that interest on the amount of the higher royalty fees not paid must be awarded from the applicable semi-annual deposit date through the date of actual payment by a cable system. We have not been persuaded that we have any specific or inherent jurisdiction to award interest. Accordingly, the Petition of the Copyright Owners to award interest has been denied.

List of Subjects in 37 CFR Part 308

Copyright, Cable television.

PART 308 [AMENDED]

In consideration of the above, § 308.2 subparagraphs (a) (1) through (4) are revised to read as follows:

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

(a) * * *

(1) .799 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fee, if any, payable pursuant to paragraphs (a) (2) through (4);

(2) .799 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .503 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .237 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

* * * * *

Thomas C. Brennan,

Acting Chairman.

October 5, 1982.

[FR Doc. 82-27849 Filed 10-8-82; 8:45 am]

BILLING CODE 1410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 2182-1]

Moratorium on Major New Source Construction or Modification in Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Interpretive rule.

SUMMARY: In response to the decision of the U.S. Court of Appeals for the Second Circuit in *Connecticut Fund for the Environment Inc.* v. *Environmental Protection Agency*, 672 F.2d 998 (2nd Cir. 1982), EPA is providing notice that the construction moratorium under Section 110(a)(2)(I) of the Clean Air Act is now in effect for major stationary sources of volatile organic compounds (VOC) throughout the State of Connecticut.

DATES: Effective on (date of publication).

FOR FURTHER INFORMATION CONTACT: Linda Murphy, Acting Chief, State Air Programs Branch, EPA, Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 223–4448.

SUPPLEMENTARY INFORMATION:

Background

In 1977 Congress added a new Part D to Title I of the Clean Air Act which requires States to revise their State Implementation Plans (SIPs) for any area which has not yet attained a national ambient air quality standard. See Sections 171–178. The revised plans, which must meet specific requirements outlined in Part D, were due to be submitted to EPA on January 1, 1979. See Section 129(c) (uncodified), Pub. L. 95–95 (1977).

Congress also required every SIP to include a provision imposing a moratorium on the construction or modification of major stationary sources after July 1, 1979 in any area where concentrations of a pollutant exceed a national standard, if emissions from the source would cause or contribute to concentrations of that pollutant, and if, as of the time of permit application, the area does not have in effect a plan meeting the requirements of Part D. See Section 110(a)(2)(I).

On July 2, 1979 (44 FR 38471) EPA promulgated an interpretive rule that had the effect of inserting this moratorium on construction into each SIP and making it effective for those States which had not yet received EPA approval of their Part D plans. See also 40 CFR 52.24 (1981).

On the same date EPA published a notice explaining that it intended to approve Part D plans conditionally if a plan contained only minor deficiencies, and if the State provided assurances that it would submit corrections on a specified schedule. (44 FR 38583). This notice announced that conditional approval of a Part D plan would have the effect of lifting the moratoriun on construction.

Connecticut's Part D Plan

On March 3, 1978 (43 FR 8962) EPA designated the entire State of Connecticut as nonattainment for the ozone standard.[1] EPA also designated portions of southwestern and central Connecticut as nonattainment for carbon monoxide (43 FR 8962). The cities of Greenwich and Waterbury were designated as nonattainment for the primary TSP standards. See also 45 FR 84769.

On July 1, 1979 EPA had not yet approved or conditionally approved Connecticut's Part D plans for these areas. Therefore, under EPA's interpretive rule, on July 2, 1979 a construction moratorium went into effect for these areas.

On December 23, 1980 (45 FR 84769) EPA took final action on Connecticut's Part D plans. EPA gave full approval to the State's plans for the carbon monoxide standard. It also approved the State's plan for the primary TSP standard in the Greenwich area. However, EPA imposed conditions on its approval of the State's plan for the ozone standard, its plan for the primary TSP standard in the Waterbury area, and its new source review program. EPA announced that these actions had the effect of removing the limitations on construction in all areas of Connecticut.[2]

Court Action

EPA's final action of December 23, 1980 approving and conditionally approving Connecticut's Part D plans was challenged in the U.S. Court of Appeals for the Second Circuit. On February 1, 1982, the Court held that, while EPA has authority to condition its approval of SIPs, the construction moratorium required under Section 110(a)(2)(I) must remain in effect until the State has satisfied all of the conditions imposed by EPA. *Connecticut Fund for the Environment* v. *EPA* 672 F. 2d 998 (2nd Cir 1982). The Court ordered EPA to modify its December 23, 1980 action in accordance with its opinion.

Construction Moratorium

Connecticut has fulfilled all but one of the conditions imposed by EPA in its December 23, 1980 action on the State's Part D plans. See 47 FR 762 (January 7, 1982). However, one condition concerning the State's plan for ozone has not yet been fulfilled. Therefore, to comply with the Court's order, EPA is today providing notice that, pursuant to Section 110(a)(2)(I) and 40 CFR 52.24 (1981), a moratorium on construction and modification of major sources of VOC is in effect statewide in Connecticut. This area will remain subject to this ban until EPA takes final action to approve fully the portion of Connecticut's ozone plans on which the condition was imposed.

As set forth at 40 CFR 52.24 (1981) and 46 FR 50766 (October 14, 1981) this limitation applies to new major sources of VOC and to modifications of major existing sources of VOC that will cause significant net increases in emissions of that pollutant.

Remaining Condition

The remaining condition on Connecticut's ozone plan concerns a revised regulation for the control of solvent metal cleaning. EPA will work with the State to remedy this remaining deficiency as quickly as possible.

Miscellaneous

EPA finds that there is good cause within the meaning of 5 U.S.C. 553(b) to take this action without first providing notice and opportunity to comment. The legal determination that the moratorium must apply in Connecticut was made by the U.S. Court of Appeals for the Second Circuit and is not subject to comment. The factual determination concerning

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[1] Ozone is a product of reactions between several chemical substances. VOC is the major precursor of ozone released by stationary sources.

[2] Connecticut was also designated as nonattainment for the secondary TSP standard in all areas of the State. (43 FR 8962). As part of the December 23, 1980 action, EPA approved the State's request for an 18-month extension of the deadline for submitting a plan for the secondary TSP standard. See Section 110(b). This plan has not yet been submitted. EPA interprets the Act and the legislative history of the 1977 Amendments as banning construction only in areas where a Part D plan for attainment of primary, health-based standard has not been approved. Accordingly, Section 110(a)(2)(I) does not ban construction or modification in areas which lack only approved Part D plans for secondary, welfare-related standards. This means that there is no ban on the construction of TSP sources in those portions of Connecticut which are designated as nonattainment for the secondary TSP standard. The other standards at issue here—ozone and carbon monoxide—do not present the same issue because the primary and secondary standards are identical. An area which is designated as nonattainment for the primary ozone or carbon monoxide standards is also designated as nonattainment for the secondary ozone or carbon monoxide standards. Consequently, an approved Part D plan for attainment of the primary ozone or carbon monoxide standard is also adequate for attainment of the secondary standards for these pollutants.

Connecticut's continued failure to satisfy one of the conditions imposed in EPA's final rulemaking is based on such clear evidence that comment is impracticable and unnecessary. For the same reasons, and in order to expedite compliance with the Court's mandate, EPA also finds that there is good cause to make this action immediately effective under 5 U.S.C. 553(d).

The Administrator has determined that this rule is a local or regionally applicable final action. Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the Second Circuit by December 13, 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.

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 it is not likely to result in any of the effects specified in Section 1(b) (1) through (3) of the Order. There are currently no pending permit applications by sources which would be affected by the restriction imposed today. EPA anticipates that the restriction will apply for only a short time. This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 40 CFR Part 52

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

Dated: October 5, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-27766 Filed 10-8-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

Health Education Assistance Loan Program

AGENCY: Public Health Service (PHS), HHS.

ACTION: Final regulations.

SUMMARY: This rule amends regulations for the Health Education Assistance Loan (HEAL) Program, authorized by the PHS Act, by increasing the rate of the insurance premium charged for Federal insurance of HEAL loans, in order to insure that sufficient funds will be available to cover insurance claims paid to HEAL lenders.

DATES: Effective date: These regulations are effective November 12, 1982.

Public comments invited: To be considered, public comments must be received by December 13, 1982. All comments received will be available for public inspection and copying at the Office of Program Development and Evaluation, BHPDS, Room 8A–41, 5600 Fishers Lane, Parklawn Building, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

ADDRESS: Written comments should be addressed to the Director, Bureau of Health Personnel Development and Service (BHPDS), 5600 Fishers Lane, Parklawn Building, Room 6A–05, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice Swift, telephone (301) 433–4540.

SUPPLEMENTARY INFORMATION: The U.S. Commissioner of Education, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education and Welfare published in the **Federal Register** on August 3, 1978 (43 FR 34320), interim-final regulations adding a new part 126 entitled "Health Education Assistance Loan Program" to Title 45 of the CFR. This new part 126 implement the HEAL Program authorized by section 727 of the PHS Act.

The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** on January 27, 1981 (46 FR 8518), final regulations transferring the HEAL Program regulations from part 126 of Title 45, CFR (Public Welfare) to a new part 60 in Title 42, CFR (Public Health). This redesignation reflected the transfer of the Federal administration of the HEAL Program from the Department of Education to the PHS.

Sections 727–739 of the PHS Act (42 U.S.C. 294–294l) authorize the Secretary to provide a Federal program of student loan insurance for graduate students in health professions schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, public health, pharmacy, chiropractic, health administration, and clinical psychology.

The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, is amending the interim-final regulations to increase the rate of the insurance premium from one-quarter of 1 percent to 1 percent per year of the loan principal. Section 732(c) of the Act authorizes the Secretary to charge an insurance premium for each HEAL loan not to exceed 2 percent per year of the loan principal. This change is issued as final regulations. The Department will later issue additional amendments to these regulations which will address the public comments on the interim-final rule.

The following is a brief summary of this change:

§ 60.14 The insurance premium.

In order to insure that sufficient funds will be available to cover insurance claims paid to HEAL lenders, the Secretary is increasing the rate of the insurance premium to 1 percent per year of the loan principal effective 30 days after the date of publication of these regulations.

Section 732(c) of the Act authorizes the Secretary to charge an insurance premium for each HEAL loan not to exceed 2 percent per year of the loan principal. The Secretary determines the rate of the insurance premium based upon the amount of claims paid from the Student Loan Insurance Fund (Fund) compared to the amount of insurance premiums paid into the Fund. The Secretary has projected that the current rate of the insurance premium will not provide a sufficient financial base to pay the claims for deaths, disabilities, defaults, and bankruptcies. The Secretary recognizes that an increase in the rate of the insurance premium will increase the financial burden on student borrowers. However, in order to maintain the solvency of the Fund, it is necessary to increase the rate of the insurance premium.

Experience of the HEAL Program shows a claims rate of 9 percent. If the

rate of the insurance premium remains at one-quarter of 1 percent and the 9 percent claims rate continues, the balance of the Fund will be insufficient to pay the claims in Fiscal Year (FY) 1984. However, most of the claims paid to date were for defaults and many of the loans in repayment were made when the statutory loan limits were lower and the interest rate was only 12 percent. Currently, HEAL students are borrowing larger amounts under increased statutory loan limits and the maximum interest rate is now 3½ percent above the average 91-day Treasury Bill rate. This results in substantially increased borrower indebtedness which can affect the ability of HEAL borrowers to repay their loans. Consequently, as more of these larger loans with high interest enter repayment, the claims rate of 9 percent may increase. In addition, during the months of May and June 1982, the Department received over 100 requests for pre-claim assistance which is more than the total number of requests for pre-claims assistance received since the program was implemented. If these requests for pre-claim assistance result in default claims paid from the Fund at the same rate as previous requests, and if the rate of the insurance premium is not increased immediately, the balance of the Fund will be insufficient to pay claims as early as January 1983. It is, therefore, critical that the rate of the insurance premium be increased immediately. The Department has concluded that a premium rate of at least 1 percent per year is necessary to assure the solvency of the Fund for the immediate future. Depending upon experience with future claims, it may be necessary to adjust the rate further.

The HEAL lenders pass on the cost of the insurance premiums to the HEAL student borrowers. Therefore, since the increase in the rate of the insurance premium established in this regulation will impact only individuals, a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96–354, is not required.

Further, the Secretary has determined that this regulation does not meet the criteria for a major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required. Specifically, since the total amount the Federal government is authorized to guarantee under this program is only $200 million/year, the increase in the rate of the insurance premium from one-quarter to 1 percent will not approach $100 million per year.

The Department has considered the option of publishing a proposed rule to allow the opportunity for public comment on the increase in the rate of the insurance premium. However, as pointed out above, it is necessary that the rate of the insurance premium be increased immediately in order to assure the continued solvency of the Fund. It is also essential, however, that HEAL lenders be given adequate lead time to implement the new rate. Accordingly, the new rate will be effective 30 days after date of publication of these regulations.

Therefore, because of the urgent need to increase the loan insurance premium rate to insure that the Fund is capable of supporting HEAL insurance claims, the Secretary has determined, according to 5 U.S.C. 553 and Department policy, that it would be impractical and contrary to the public interest to follow proposed rulemaking procedures. Notwithstanding the ommission of rulemaking procedures in the issuance of these regulations, public comments are invited as indicated above.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs—education, Loan programs—health, Medical and dental schools, Reporting requirements, Student aid.

PART 60 [AMENDED]

Accordingly, subpart C of 42 CFR part 60 is amended as set forth below:

Paragraph (b) of § 60.14 is revised to read as follows:

§ 60.14 Insurance premium.

* * * * *

(b) *Rate.* The rate of the insurance premium is 1 percent per year of the loan principal.

* * * * *

(Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Sec. 732 of the Public Health Service Act, 93 Stat. 582 (42 U.S.C. 294e))

(Catalog of Federal Domestic Assistance Number 13.108; Health Education Assistance Loan Program)

Dated: August 5, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: September 22, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-27911 Filed 10-8-82; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6324

[M-41701]

Montana; Partial Revocation of Reclamation Withdrawal

Correction

In FR Doc. 82-24603, appearing on page 39494, on Wednesday, September 8, 1982, in the second column, under T. 9S., R. 48 E., in Sec. 21, "E½" should read "SE¼".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1207

[No. 38377]

Indexing the Annual Operating Revenues of Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a methodology for indexing the annual operating revenues of motor carriers of property in order to eliminate the effects of inflation from the classification process. Carriers are placed in Class I, Class II or Class III categories based upon annual operating revenues. Indexing will provide assurances that carriers are moved to a higher accounting and reporting class because of real business expansion, and not from inflationary consequences. The indexing medium will be the All Commodities Producers Price Index (PPI), and the base year will be 1980.

The Commission has concluded that a carrier should not be reclassified upward until it exceeds the upper revenue threshold for three consecutive years instead of one year as presently prescribed. Adopting a three year revenue qualification rule will make upward and downward reclassification rules uniform.

The Commission also decided to adopt a two year revenue qualification rule for classifying general commodity carriers.

DATE: This action is to be effective January 1, 1982.

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

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1981, the Commission served a notice of proposed rulemaking (NPR) which proposed to index annual operating revenues for motor carrier classification purposes (46 FR 60035, December 8, 1981). The proposed indexing medium was the PPI. The new methodology would continue to classify carriers based on annual operating revenues. However, a price deflator formula was proposed to assess whether a carrier's revenue increases were caused by inflation or real business expansion.

Review of Responses

The Commission received comments from the American Trucking Associations, Inc. (ATA); Foss L&T Co. (FOSS); and the Regular Common Carrier Conference (RCCC).

Both the ATA and FOSS supported the NPR in its entirety.

The RCCC supported the concept and the methodology of indexing operating revenues of motor carriers of property as stated in the NPR. However, the RCCC offered two suggestions.

The *first* was to modify the Commission's classification rules to provide for reclassification of a carrier to a higher class only after its annual operating revenues exceeded the upper revenue threshold for three consecutive years. The RCCC believes that the rationale for using a three year period for downward reclassification (i.e. to ensure that a change in revenue is not due to exceptional or nonrecurring circumstances), equally applies to upward reclassification.

The *second* was that the close connection between the classification instruction in 49 CFR Parts 1207 and 1240 and Instruction 27 carriers should be explained in the Final Rule. Instruction 27 carriers are selected on the basis of three factors (1) common carrier status, (2) Class I and II status, and (3) a derivation of 75 percent of revenue from hauling general commodities.

Discussion and Conclusions

The Commission classifies carriers based upon their annual operating revenues. Part of the annual increase in annual operating revenues is due to inflation. As a result, some small carriers are unnecessarily placed in higher classes and become subject to increased accounting and reporting requirements without a real expansion in their business operations.

The Commission, in the past, has alleviated this problem by raising the revenue classification levels every few years. In the interim, however, some carriers were reclassified to higher accounting and reporting classes based on inflated annual operating revenues. When the revenue classification levels were raised, it was probable that these marginally classified carriers would be moved back to a lower class. Besides the apparent inconvenience to these carriers, the fluctuations also hampered comparability in rate bureau traffic studies and Commission time series analyses and forecasting.

The Commission is adopting the indexing methodology proposed in the NPR (46 FR 60035).

The formula to apply the index is as follows:

$$\text{Current year's annual operating revenues} \times \frac{\text{1980 average PPI}}{\text{current year's average PPI}} = \text{adjusted annual operating revenues}$$

We selected 1980 as the base year because the revenue classification levels were last revised in that year (44 FR 55585).

The Commission will annually publish in the **Federal Register** the index used in the price deflator formula.

The current motor carriers of property revenue classification levels will not change with the adoption of this rule. The Commission will apply the deflator formula to each carrier's annual operating revenues as reported in the Schedule of Results of Operations in Annual Report Form M. Carriers that do not file the annual report with the Commission may be required to file a Carrier Classification Survey Form. All carriers will be notified of any classification changes.

The Commission has concluded that the two suggestions made by the RCCC have merit and should be adopted in this Final Rule. The classification rules have been revised to provide for upward reclassification only after a carrier has exceeded the upward revenue threshold for three consecutive years. With the adoption of this revision the upward and downward reclassification rules will become uniform. The classification rules have also been revised to more clearly state the criteria for classification as a general commodity carrier, (Instruction 27 carrier), and to adopt a two year revenue qualification rule for these carriers. The Commission believes that classifying carriers as Instruction 27 carriers after only one year of meeting the 75 percent revenue test, and vice versa, has caused carriers to vacillate in and out of the universe of cost study carriers at an unacceptable rate. Accordingly, in this Final Rule we are adopting a two consecutive year revenue qualification rule for Instruction 27 carriers.

Regulatory Flexibility Act: This Final Rule will not have a significant impact on a substantial number of small businesses. In this proceeding, we are implementing a new classification methodology which will prevent motor carriers of property from being subjected to unnecessary accounting and reporting requirements as a result of inflation. This rule will not impose any additional reporting burden on Class I and II motor carriers of propperty. Class III carriers may have to complete and file an annual survey form, but the burden imposed by this form would be insignificant.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1207

Uniform System of accounts, Motor carriers.

This Final Rule does not revise Part 1240, Classes of Carriers. The Commission has initiated a proceeding to eliminate Part 1240 and include all motor carriers of property classification rules in the appropriate instructions of the uniform system of accounts (Part 1207).

Accordingly, we are adopting the changes to Title 49 of the Code of Federal Regulations as set forth in the Appendix.

This rule is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: September 28, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

Amend Title 49 CFR as follows:

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

1. Revise Instruction 1, Classification of carriers to read as follows:

1. Classification of carriers.

(a) For purposes of accounting and reporting regulations, common and

contract motor carriers of property subject to the Interstate Commerce Act are grouped into the following three classes:

Class I. Carriers having annual carrier operating revenues (including interstate and intrastate) of $5 million or more after applying the revenue deflator formula shown in Note A.

Class II. Carriers having annual carrier operating revenues (including interstate and intrastate) of $1 million but not more than $5 million after applying the revenue deflator formula in Note A.

Class III. Carriers having annual carrier operating revenues (including interstate and intrastate) of less than $1 million after applying the revenue deflator formula in Note A.

(b)(1) The class to which any carrier belongs shall be determined by annual carrier operating revenues after applying the revenue deflator formula in Note A. Upward and downward reclassification will be effected as of January 1, of the year immediately following the third consecutive year of revenue qualification.

(2) Carriers not required to file an Annual Report (Form M) may be required to file the Annual Carrier Classification Survey Form. All carriers will be notified of any classification changes.

(3) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual carrier operating revenues after applying the revenue deflator formula shown in Note A.

(4) When a business combination occurs, such as a merger reorganization, or consolidation, the surviving carrier shall be reclassified effective as of January 1 of the next calendar year on the basis of the combined revenues for the year when the combination occurred after applying the revenue deflator formula shown in Note A.

(5) In unusual circumstances, such as partial liquidation, curtailment or elimination of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying the conditions justifying an exception.

(c)(1) All Class I and II common carriers deriving 75 percent or more of their revenues from intercity transportation of general commodities shall be classified as Instruction 27 carriers as of January 1, of the year immediately following the second consecutive year of meeting the revenue requirement.

(2) Any Instruction 27 carrier which fails to meet the 75 percent revenue requirement shall be reclassified as of January 1, of the year immediately following the second consecutive year of failing to meet the revenue requirement.

(3) Instruction 27 carriers shall also be reclassified as of January 1, of the year immediately following the year in which they fail to meet the requirements of common carrier status or the Class I or Class II classification.

(d) Special provisions for carriers with revenues from general and special commodities and from household goods operations.

(1) Separate matrices of revenue and expenses are provided for carriers subject to instructions 27 and 28A and for carriers subject to instruction 28B for accounting and reporting purposes. For purposes of accounting and reporting, the revenues of common and contract motor carriers of property, shall be categorized as follows:

Instruction 27 and 28A (general, and other special commodity).

Instruction 28B (household goods).

Each category of revenue is then classified in accordance with the dollar revenue limits prescribed in paragraph (a). When a carrier has both household goods and general and other special commodity revenue, each category shall be classified (I, II or III) to determine the accounting and reporting regulations which pertain to that category.

(2) If a carrier grouped as Class I or Class II carrier in accordance with paragraph (a) has operations in both categories in paragraph (d)(1) above, and one of the categories is classified as Class III, such revenues and expenses shall be accounted and reported in accordance with the regulations pertaining to the Class I or Class II category.

(3) If a carrier grouped as Class II in accordance with paragraph (a) has operations in both categories and both categories are grouped as Class III in accordance with paragraph (d)(1), such revenues and expenses shall be accounted and reported in accordance with the regulations pertaining to the category with the larger annual carrier operating revenues.

(e) Any carrier, at its option, may adopt the accounting requirements of a higher class than the one in which it falls. Notice of such action shall be promptly filed with the Commission. However, for reporting purposes the carrier shall comply with the reporting requirements of the class applicable to its annual carrier operating revenue.

Note A.—Each carrier's operating revenues will be deflated annually using the All Commodities Producers Price Index (PPI) before comparing them with the dollar revenue limits prescribed in paragraph (a). The PPI is published monthly by the Bureau of Labor Statistics. The formula to be applied is as follows:

$$\text{Current year's operating revenues} \times \frac{\text{1980 average PPI}}{\text{current year's average PPI}} = \text{adjusted annual operating revenues}$$

2. Revise Paragraph (a) of Instruction 27, Distribution of expenses, to read as follows:

27. Distribution of expenses to activities: general commodity carriers.

(a) All Class I and Class II common carriers which derive 75 percent or more of their revenues from the intercity transportation of general commodities shall be classified as Instruction 27 carriers in the year immediately following the second consecutive year of meeting this revenue requirement. They shall distribute expenses to the following activities (see definition 2):

(1) Line-haul.
(2) Pickup and delivery.
(3) Billing and collecting.
(4) Platform.
(5) Terminal.
(6) Maintenance.
(7) Traffic and sales.
(8) Insurance and safety.
(9) General and administrative.

Classes I and II common and contract carriers, other than those specified in paragraph (a) of this section, shall be designated as instruction 28A or 28B carriers. They shall distribute expenses as described in their respective sections of instruction 28.

* * * * *

[FR Doc. 82-27864 Filed 10-8-82; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR 1249

[No. 38857]

Revisions to Annual Motor Carriers of Passengers Reporting Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The commission is eliminating a number of supporting schedules contained in the Form MP–1 (Annual Report for Motor Carriers of Passengers) that it no longer uses on a regular or frequent basis. The Commission is also eliminating the Annual Report Supplement on Corporate Disclosure. Elimination of these schedules and the annual report supplement will result in a reduced reporting burden for motor carriers of passengers.

DATES: This action is to be effective for the reporting year beginning January 1, 1982.

ADDRESS: Copies of this rule may be purchased by contacting: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, D.C. 20423, 202–289–4357, D.C. Metropolitan Area, 800–424–5403, toll free for outside D.C. area.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., 202–275–7448.

SUPPLEMENTARY INFORMATION: The Interstate Commerce Act authorizes the Commission to require and prescribe the form of annual, periodic, and special reports filed by carriers subject to its regulation. The information reported by these carriers helps to fulfill the regulatory responsibilities of the Commission in the areas of rate regulation, Valuation of transportation property, operating rights, mergers, acquisitions, abandonments and discontinued service.

It is the policy of the Commission to only require and collect financial and statistical data that is used on a regular and frequent basis to fulfill its regulatory responsibilities. The Commission will no longer act as a data collection agent for various private interests. This policy was publically announced in the Commission's policy statement on May 7, 1979, (44 FR 27537).

The Commission has surveyed the use of Annual Report Form MP–1 data within the Commission and concluded that a number of schedules and the supplement on corporate disclosure are not used on a regular and frequent basis. Therefore, these schedules and the annual report supplement will be eliminated from the report. The elimination of these schedules and the annual report supplement is consistent with the aforementioned policy statement on financial and statistical reporting and reductions in the annual report of motor carriers of property instituted in Docket No. 38568, *Revision to Annual Motor Carrier Reporting Requirements*, served March 5, 1982. However, the Commission reserves the right to request specific information when needed for a particular regulatory purpose.

The reduction in reporting burden for Common and Contract Motor Carriers of Passengers is substantial. There are presently about 69 Class I passenger carriers filing Form MP–1. The provisions of this final rule will relieve these carriers from approximately 1,035 hours of reporting burden.

The Commission finds that a notice of proposed rulemaking, as defined under the Administrative Procedure Act, 5 U.S.C. 553(b), is not required to adopt this revision because it involves a reduction in accounting and reporting burden. However, in keeping with our belief that this rule can benefit from public scrutiny, we are requesting that the public study the rule and report, within 45 days, any suggested changes. If the Commission concludes after reviewing the comments, that it is necessary to reconsider this rule, a further notice will be published in the **Federal Register**. Otherwise, the provisions of this final rule are in effect.

Regulatory Flexibility Act

This final rule will not have a significant impact on a substantial number of small entities. This final rule affects 69 motor carriers of passengers. This final rule reduces accounting and reporting burden by approximately 1,035 hours annually: no new accounting and reporting requirements for these or other regulated carriers are introduced in this proceeding. The effect of this final rule will be a lessening of the expense and burden of filing annual reports with the Commission.

This final rule does not significantly affect the quality of the human environment or conservation of energy resources.

List of Subjects in 49 CFR Part 1249

Motor carriers, Reporting requirements.

Accordingly, we adopt the changes to Title 49 of the Code of Federal Regulations as set forth in Appendix A.

This rule is issued under authority of 49 U.S.C. 10321 and 11145, and 5 U.S.C. 553.

Decided: September 28, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1249 [AMENDED]

The Commission is eliminating the following items from the annual reporting requirements for motor carrier of passengers, under 49 CFR 1249—Reports of Motor Carriers.

(1) The following schedules are eliminated from the Form MP–1:

Schedule 280—Compensating Balances and Short-Term Borrowing Arrangements
Schedule 290—Special Deposits
Schedule 320—Transactions with Officers, Stockholders, and Employees
Schedule 1500—Organization, Franchises, and Permits
Schedule 500—Other Intangible Property
Schedule 520—Unamortized Debt Discount and Expense
Schedule 530—Contingent Assets
Schedule 530 A—Contingent Liabilities
Schedule 535—Reserve for Depreciation and Amortization
Schedule 1000—Competitive Bidding—Clayton Antitrust Act

(2) The Annual Report Supplement on Corporate Disclosure.

[FR Doc. 82–27845 Filed 10–8–82; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 47, No. 197
Tuesday, October 12, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1290

Floral Research and Consumer Information Act; Hearing of Proposed Order

AGENCY: Agricultural Marketing Service.

ACTION: Notice of hearing on proposed order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed Floral Research and Consumer Information Order (hereinafter called the "Order"). The proposal was submitted by the Floraboard Development Committee, representing flower and plant producers and importers. The proposed order would provide for a nationally coordinated research and promotion program financed by an assessment on certain flowers and plants. The text of the proposal to be considered is set forth below.

DATES: Hearing session to be held:

October 27, 1982 at 1:30 p.m.
November 1, 1982 at 1:30 p.m.
November 4, 1982 at 10:00 a.m.
November 9, 1982 at 9:30 a.m.

ADDRESSES: The hearing sessions are scheduled as follows:

1. October 27, 1:30 p.m., Washington, D.C., USDA Administration Building, Room 104–A, 14th and Independence Avenue, SW.

2. November 1, 1:30 p.m., Orlando, Florida, Florida Fruit and Vegetable Association Auditorium, 4401 E. Colonial Drive.

3. November 4, 10:00 a.m., San Francisco, California; Federal Building, Room 13029, 450 Golden Gate Avenue.

4. November 9, 9:30 a.m., Fort Worth, Texas, Food Safety and Inspection Service Training Center, 2401 Scott Avenue (I–30 & Beach Street exit). Any session may be continued beyond one day if necessary.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–2615.

SUPPLEMENTARY INFORMATION: This action is exempt from the requirements set forth in E.O. 12291 because it is governed by the provisions of Sections 556 and 557 of 5 U.S.C. The action has also been reviewed and classified as nonmajor.

The hearing is called pursuant to the provisions of the Floral Research and Consumer Information Act (Title 17 of Pub. L. 97–98, 97th Congress, approved December 22, 1981, 7 U.S.C. 4301–4319), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate an order.

This proposal has been widely discussed within the industry for over a year. A pre-notice press release was issued nationwide on August 25, 1982, allowing interested persons until September 24, 1982, to file suggested changes on the proposed order. Because the holidays are busy periods for the floral industry, the Floraboard Development Committee requested that the hearing be held before Thanksgiving. Copies of this notice are being mailed to all State Governors and all known flower and plant associations, and a press release will be made available nationwide to news media.

A dozen letters were received in response to the August 25 pre-notice press release. The two suggested alternatives were both contrary to the enabling law and thus were rejected.

The public hearing is for the purpose of:

(a) Receiving evidence about economic and marketing conditions which relate to the proposal and to any appropriate modification of it;

(b) Determining the extent of need for an order to implement a nationally coordinated cut flower, potted flowering plant, and foliage plant research and consumer information program;

(c) Determining the economic and social impact of the proposed order on segments of industry and public affected by such an order; and

(d) Determining whether provisions specified in the proposed order or some other provisions appropriate to the terms of the Floral Research and Consumer Information Act (7 U.S.C. 4301 et seq.) will tend to effectuate the declared policy of the Act.

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the puspose of this action, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Under the provisions of the Floral Research and Consumer Information Act, any producer or importer whose total sales of flowers and plants do not exceed $100,000 during a twelve consecutive month period shall be exempt from paying assessments. In addition, all affected producers may receive a refund of their assessment upon request to the Floraboard. Interested parties are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small businesses.

From the time this hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 1290

Administrative practice and procedure, Advertising, Agricultural research, Floral products.

The proposed order, set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by the Floraboard Development Committee:

Proposal No. 1

The provisions of the order should read as follows:

PART 1290—FLORAL RESEARCH AND CONSUMER INFORMATION ORDER

Definitions

§ 1290.101 Secretary.

"Secretary" means the Secretary of Agriculture of the United States Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1290.102 Act.

"Act" means the Floral Research and Consumer Information Act (7 U.S.C. 4301).

§ 1290.103 Department.

"Department" means the United States Department of Agriculture, the Secretary of Agriculture, or any officer or employee of the Department of Agriculture who has been delegated or may be delegated the authority to act for the Department of Agriculture on a particular matter.

§ 1290.104 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1290.105 Cut flowers.

"Cut flowers" means all flowers and decorative foliage used as fresh-cut flowers, fresh-cut decorative foliage, dried, preserved, and processed flowers, or dried and preserved decorative foliage, produced either under cover or in field operations.

§ 1290.106 Potted flowering plants.

"Potted flowering plants" means those plants that normally produce flowers, primarily produced in pots or similar containers, that are primarily used for interior decoration, whether grown under cover or in field operations.

§ 1290.107 Foliage plants.

"Foliage plants" means those plants, normally without flowers, primarily produced in pots or similar containers, that are primarily used for interior decorations, whether grown under cover or in field operations.

§ 1290.108 Propagational material.

"Propagational material" means any plant material used in the propagation of cut flowers, potted flowering plants, and foliage plants, including cuttings, bulbs and corms, seedlings, canes, liners, plants, cells or tissue cultures, air layers and bulblets, rhizomes, and root stocks. This term does not include seeds.

§ 1290.109 Flowers and plants.

"Flowers and plants" means cut flowers, potted flowering plants, foliage plants, and propagational material. This term means only flowers and plants for interior use and does not include bedding plants, exterior landscape plants, or any other exterior plant material.

§ 1290.110 United States.

"United States" means the fifty States of the United States of America, the territories and possessions of the United States of America, and the District of Columbia.

§ 1290.111 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of cut flowers, potted flowering plants, and foliage plants.

§ 1290.112 Research.

"Research" means any type of research to advance the image, desirability, or marketability of cut flowers, potted flowering plants, and foliage plants. This includes the gathering of statistics for marketing research.

§ 1290.113 Consumer education.

"Consumer education" means any action to provide information on the care and handling of cut flowers, potted flowering plants, and foliage plants.

§ 1290.114 Marketing.

"Marketing" means the sale or other disposition in commerce of cut flowers, potted flowering plants, and foliage plants.

§ 1290.115 Producer.

"Producer" means any person who produces domestically, for sale in commerce, cut flowers, potted flowering plants, or foliage plants.

§ 1290.116 Floraboard.

"Floraborad," or the "Board" means the administrative board established pursuant to § 1290.136.

§ 1290.117 Importer.

"Importer" means any person who imports flowers and plants from outside of the United States or who acts as an agent, broker, or consignee of any person or nation that produces flowers and plants outside of the United States for sale in the United States.

§ 1290.118 Commodity group.

"Commodity group" means that portion of the flower and plant industry devoted to the production and importation of any one of the following: (a) cut flowers; (b) potted flowering plants; or (c) foliage plants.

§ 1290.119 Cost of plant material.

"Cost of plant material" means the actual price paid by a producer for any propagational material or any other flowers and plant used in the production of flowers and plants. This term does not include the cost of seeds.

Floraboard

§ 1290.136 Establishment and membership.

There is hereby established a board, to be named "Floraborad," which shall initially consist of 75 voting members. This Board shall be appointed by the Secretary from nominations submitted by eligible organizations certified pursuant to § 1290.176 or by producers and importers in a manner authorized by the Secretary pursuant to § 1290.138(c).

§ 1290.137 Term of office.

The members of the Board shall serve for terms of three years, except for appointments to the initial Board, in which case one-third shall be for a term of one year, and one-third shall be for a term of two years.

§ 1290.138 Nominations.

All nominations to the Board authorized under § 1290.136 shall be made in the following manner:

(a) Within 90 days of the announcement of approval of this order, or such other period as prescribed by the Secretary, a nomination for each member to be selected for each geographic area and for each commodity group as specified in paragraph (d) of this section, shall be submitted to the Secretary by eligible organizations certified pursuant to § 1290.176 except if there is no eligible organization certified for a geographic area, or if the Secretary determines that a substantial number of producers or importers are not members of, or their interests are not represented by, any such eligible organization, then nominations shall be submitted in a manner authorized by the Secretary. Adequate notice of all nomination meetings, whether initial or subsequent ones, shall be given flower and plant producers, importers and the Secretary.

(b) Where there is more than one eligible organization within a geographic area, the organizations shall caucus for the purpose of jointly nominating a qualified individual for each member position.

(c) After the establishment of the Board, the nominations for subsequent Board members shall be submitted to

the Secretary not less than 60 days prior to the expiration of the terms of the members whose terms are expiring.

(d) For purposes of nominating producers and importers to the Board, producers and importers shall be divided into three commodity groups: cut flowers, potted flowering plants, and foliage plants. When the Board is initially established, it shall be composed of one-third producers and importers of cut flowers, one-third producers and importers of potted flowering plants, and one-third producers and importers of foliage plants.

(e) For purposes of nominating producers to the initial Board, the United States shall be divided into geographic areas, according to commodity groups, so as to reflect as nearly as possible, the dollar value of cut flowers, potted flowering plants, and foliage plants, respectively, produced in each geographic area proportionate to the total dollar value of all cut flowers, potted flowering plants, and foliage plants, respectively, produced in the United States based on the 1979 Census of Horticultural Specialties, conducted by the Bureau of the Census, on data of the Statistical Reporting Service, United States Department of Agriculture, and on information from knowledgeable industry people. For the purpose of nominating importers to the initial Board, importers shall be divided according to commodity groups, and the number of nominees shall reflect, as nearly as possible, the dollar value of cuts flowers, potted flowering plants, and foliage plants, respectively, imported by each such nominee, or organization represented by such nominee, proportionate to the total dollar value of all cut flowers, potted flowering plants, and foliage plants, respectively, produced in and imported into the United States based on the data previously mentioned in this paragraph plus data compiled by the United States Customs Service.

(f) For purposes of nominating producers to the initial Board, the geographic areas and the number of members on the Board from each area for the commodity groups of cut flowers, flowering plants, and foliage plants shall be as follows:

(1) The commodity group of cut flowers shall consist fo five geographic areas, with the number of board members for each area designated as follows:

(i) Area 1 shall be represented by seven Board members and shall consist of the following States and Territories: Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and Guam, American Samoa, North Mariana Islands, and the Trust Territory of the Pacific Islands.

(ii) Area 2 shall be represented by three Board members and shall consist of the following States: Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming.

(iii) Area 3 shall be represented by five Board members and shall consist of the following States and the District of Columbia: Connecticut, Delawere, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia.

(iv) Area 4 shall be represented by three Board members and shall consist of the following States, the Commonwealth of Puerto Rico and the Virgin Islands: Alabama, Florida, Georgia, Mississippi, and South Carolina.

(v) Area 5 shall consist of all importers and shall be represented by seven board members.

(2) The commodity group of potted flowering plants shall consist of seven geographic areas, with the number of Board members for each area designated as follows:

(i) Area 1 shall be represented by four Board members and shall consist of the following States and Territories: Alaska, California, Hawaii, Nevada, Oregon, and Washington; and Guam, American Samoa, North Mariana Islands, and the Trust Territory of the Pacific Islands.

(ii) Area 2 shall be represented by four Board members and shall consist of the following States: Arizona, Colorado, Idaho, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

(iii) Area 3 shall be represented by four Board ;members and shall consist of the following States: Illinois, Indiana, Iowa, Minnesota, Missouri, and Wisconsin.

(iv) Area 4 shall be represented by four Board members and shall consist of the following States and the Distric of Columbia: Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia.

(v) Area 5 shall be represented by four Board members and shall consist of the following States: Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

(vi) Area 6 shall be represented by four Board members and shall consist of the following States, the Commonwealth of Puerto Rico and the Virgin Islands: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

(vii) Area 7 shall consist of importers and shall be represented by one Board member.

(3) The commodity group of foliage plants shall consist of six geographic areas, with the number of Board members for each area designated as follows:

(i) Area 1 shall be represented by six Board members and shall consist of the following States and Territories: Alaska, California, Hawaii, Nevada, Oregon, and Washington; and Guam, American Samoa, North Mariana Islands, and the Trust Territory of the Pacific Islands.

(ii) Area 2 shall be represented by one Board member and shall consist of the following States: Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

(iii) Area 3 shall be represented by three Board members and shall consist of the following States and District of Columbia: Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode, Island, Vermont, Virginia, West Virginia, and Wisconsin.

(iv) Area 4 shall be represented by eleven Board members and shall consist of the following States, the Commonwealth of Puerto Rico and the Virgin Islands: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

(v) Area 5 shall be represented by two Board members and shall consist of the following States: Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

(vi) Area 6 shall consist of all importers and shall be represented by two Board members.

(g) Two years after assessment of funds commences pursuant to this order, and annually thereafter, the Floraboard, with the approval of the Secretary, shall adjust the commodity group representation of each commodity group on the basis of the amount of assessments, less refunds, collected from each commodity group during the preceding calendar year. In addition, this periodic adjustment of the membership of the Floraboard shall reflect, to the maximum extent practicable, the proportionate share of assessments, less refunds, collected from producers in each of the several geographic regions of the United States

defined by the Secretary under paragraphs (f) and (h) of this section and the proportionate share of assessments, less refunds, collected from importers of flowers and plants imported into the United States from each country, provided that there shall at all time be more producers representing a particular commodity group on the Board than importers representing that commodity group.

(h) For purposes of reapportionment, after the establishment of the initial Board, the area grouping of the United States provided for in paragraph (f) of this section, including the area distribution of the members of the Board, shall be reviewed at least every five years, and no more frequently than every three years, by the Board, or by a person or agency designated by the Board to perform such review, and shall take into consideration the amount of assessments, less refunds, collected in each geographic area respectively, during the three, four or five year period immediately preceding such review. The results of such review shall be reported to the Secretary along with any recommendations by the Board including whether the delineation of areas or distribution of the Board by area should continue without any change, or whether changes should be made in either the areas or the number of Board members to be appointed from each area. The Secretary may adopt any such recommendation and make changes in the area distribution of the Board to implement such recommendations.

§ 1290.139 Appointments.

From the nominations made pursuant to § 1290.136 and § 1290.138 of this subpart, the Secretary shall appoint the members of the Board on the basis of the representation provided for in § 1290.138.

§ 1290.140 Acceptance.

Any nominee selected to be a member of the Floraboard shall notify the Secretary of his acceptance in writing within 30 days.

§ 1290.141 Vacancies.

To fill any vacancies occasioned by the death, removal, resignation or disqualification of any member of the Board, a successor for the unexpired term of such member shall be nominated and appointed in a manner specified in § § 1290.136, 1290.137, 1290.138, and 1290.139, except that the replacement of a Board member with an unexpired term of less than six months is not necessary.

§ 1290.142 Procedure.

(a) A majority of the members of the Board shall constitute a quorum, and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action, upon the concurring votes of a majority of its members, by mail, telegraph, or telephone, but any such telephone vote shall be confirmed promptly in writing.

§ 1290.143 Compensation and reimbursement.

The members of the Board, and the members of any special panels convened, shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties under this subpart.

§ 1290.144 Powers of the Board.

The Board shall have the following powers:

(a) To supervise the administration of this subpart in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1290.145 Duties of the Board.

The Board shall, among other things, have the following duties:

(a) To meet and organize and to select from among its members a chairman, and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules and by-laws for the conduct of business as it may deem advisable;

(b) To develop and submit to the Secretary plans or projects, together with the Board's recommendations with respect to approval thereof by the Secretary;

(c) To prepare, and submit to the Secretary for his approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of each research, information, advertising, promotion, and developmental plan or project;

(d) To appoint from its members an Executive Committee, consisting of not more than 15 members, which shall, to the maximum extent practicable, reflect the membership composition of the Board, and whose commodity group representation shall be proportional to that of the Board. It shall be a duty of the Executive Committee to employ a staff for the Board and administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(e) To accumulate a reasonable reserve not to exceed approximately two fiscal periods' expenses to maintain continuity of programs and fulfill other obligations and expenses;

(f) To enter into contracts or agreements, with the approval of the Department, with appropriate contracting parties, including industry groups, profit or nonprofit companies, private or State colleges and universities, and governmental groups, for the development and carrying out of the projects and programs of the Board as authorized by Section 1708 of the Act (7 U.S.C. 4307), and for the payment of the costs thereof with funds accruing pursuant to the administration of this subpart except nothing in this subpart shall preclude the Board from directly, without the use of contractors, conducting projects or activities to effectuate the intent and purposes of the Act. Any such contract or agreement shall provide (1) that such contracting parties shall develop and submit to the Board a plan or project, together with a budget or budgets, which shall show the estimated cost to be incurred for such plan or project, and (2) that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement, to make periodic reports to the Board and not to use these funds to finance unrelated activities of the contracting party or its affiliated organizations, to account for funds received and expended, and to report to the Secretary or Board as required;

(g) To maintain books and records and prepare and submit reports from time to time to the Secretary as he may prescribe and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(h) To periodically prepare and make public and to make available to producers, reports of activities carried out and at least once each fiscal period

to make public an accounting for funds received and expended;

(i) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request and to submit a copy of each such audit to the Secretary;

(j) To give the Secretary the same notice of meetings of the Board, the Executive Committee, and subcommittees as is given to its members in order that representatives of the Secretary may attend such meetings;

(k) To submit to the Secretary such information pertaining to this subpart as he may request; and

(l) To appoint and convene, from time to time, special panels drawn from the production, importation, wholesale and retail segments of the flower and plant industry to assist in the development of marketing and research programs.

Research, Information, Education, and Promotion

§ 1290.151 Research, information, education, and promotion.

(a) The Board shall in the manner prescribed in § 1290.145 provide for:

(1) The establishment, issuance, effectuation, and administration of plans or projects for advertising, sales promotion, consumer education, producer information, and interior urban beautification, and for the disbursement of necessary funds for such purposes; and

(2) The establishment and carrying on of research, market development projects, and studies with respect to the sale, distribution, marketing, or utilization of flowers and plants in accordance with Section 1708 of the Act (7 U.S.C. 4307), to the end that the marketing and utilization of flowers and plants may be encouraged, expanded, improved, or made more efficient and/or acceptable, and the data collected by such activities may be disseminated, and for the disbursement of necessary funds for such purposes.

(b) Each program or project authorized under paragraph (a) of this section shall be periodically evaluated by the Board to insure that each plan or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Board or the Secretary finds that a program or project does not further the purposes of the act, then the Board shall terminate such program or project.

(c) No reference to a private brand or trade name shall be made unless the Secretary determines that such reference will not result in discrimination against specific producers or importers of flowers and plants. No such advertising, consumer education, or sales promotion programs shall make use of false or misleading claims on behalf of flowers and plants, or false or misleading statements with respect to quality, value, or use of any competing product.

Expenses and Assessments

§ 1290.161 expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from assessments received pursuant to § 1290.162 and other funds available to the Board.

(b) The Board shall reimburse the Secretary from assessments for all the expenses and expenditures, excluding salaries, which were incurred by the Government in connection with the conduct of the referendum for the approval of an order.

(c) The Board shall reimburse the Secretary from assessments for administrative costs, including salaries, which are incurred by the Government with respect to this subpart.

§ 1290.162 Assessments.

(a) Each producer, upon sale or transfer of ownership of flowers and plants within the United States, shall pay an assessment to the Board based on the dollar value of such sales transaction minus the cost of plant material. If the producer is a retailer, the assessment will be based on the then current wholesale value of the flowers and plants, less the cost of plant material. In the case of consignment sales, the producer shall pay the assessment on the basis of the dollar value of the sale of flowers and plants, less the sales commission, freight cost, and cost of plant material.

(b) Each importer, upon the sale of imported flowers and plants within the United States, shall pay an assessment to the Floraboard based on the dollar value of such sales transactions, without deducting the cost of plant material. If the importer is a retailer, the assessment will be based on the purchase price paid by the importer. In the case of consignment sales, the assessment shall be paid by the importer and shall be based on the dollar value of the sale of flowers and plants, less the sales commission and cost of transportation within the United States.

(c) For the first two years after this order is approved in referendum, the rate of assessment shall be one-half of one per centum of the value of the flowers and plants sold as determined under paragraphs (a) and (b) of this section.

(d) for the years subsequent to the first two years after this order is approved in referendum, the Board may increase or decrease the rate of assessment prescribed by the order by no more than one-quarter of one per centum of the value of flowers and plants sold per year. The rate of assessment may in no event exceed one and one-half per centum of the value of flowers and plants sold.

(e) Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder.

§ 1290.163 Exemptions.

Any producer or importer, and any person who is both a producer and importer, whose total sales of flowers and plants do not exceed $100,000 during a twelve consecutive month period prior to the date an assessment is due and payable shall be exempt from assessments under this part. The Board shall have the discretion to make annual adjustments in the level of exemption to account for inflation. For the purpose of determining a producer's or importer's total sales, the Board shall promulgate rules and regulations pursuant to Section 1712 of the Act (7 U.S.C. 4311).

§ 1290.164 Producer or importer refund.

Any producer or importer who pays an assessment under the authority of the order shall have the right to demand and receive from the Board a refund of such an assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with regulations and on such forms as are prescribed by the Board and approved by the Secretary. Such demands shall be made within sixty days from the date the assessment becomes payable pursuant to § 1290.162(e). Refunds shall be made as promptly as administratively possible, but in no event more than sixty days after the submission of proof satisfactory to the staff of the Board that the producer or importer paid the assessment for which refund is sought.

§ 1290.165 Influencing government action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing

governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 1290.171 Reports.

Each producer and importer of flowers and plants who may be subject to this subpart shall be required to report to the employees of the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to, the following:

(a) Volume and value of domestically produced flowers and plants sold and the cost of plant material; and

(b) Volume and value of imported flowers and plants sold.

§ 1290.172 Books and records.

Each producer and importer of flowers and plants shall maintain and make available for inspection by the employees of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1290.173 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1290.171 and 1290.172 and all information obtained by the Board pertaining to producer refunds made pursuant to § 1290.164 shall be kept confidential by all employees of the Board, all employees of the Department, and all officers and employees of contracting parties, and shall not be available to Board members or any other producers or importers. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of a number of persons subject to this subpart or statistical data collected from such persons, which do not identify the information furnished by any one person, (b) the publication of general statements relating to refunds made by the Board during any specific period, including regional information on refunds, (c) the publication by the Board of information on the amount of assessments collected from each commodity group and the rate of refund in each commodity group or, (d) the publication by direction of the Secretary of the name of any person convicted of violating this subpart, together with a statement of the particular provisions violated by such person.

Certification of Organizations

§ 1290.176 Certification of organizations.

(a) Any producer organization within a geographic area designated pursuant to § 1290.138 may request the Department to certify its eligibility to represent producers of flowers and plants, or importers of flowers and plants to participate in nominating members to represent such geographic area on the Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(1) Geographic area covered by the organization's active membership;

(2) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers and importers, and information as to the volume of production by State or the volume of importation by country accounted for by the organization's producer and importer members;

(3) The extent to which the producer and importer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) Whether the majority of the governing board of the organization is composed of producers and importers; and

(8) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary consideration in determining the eligibility of an organization shall be whether its membership consists of a substantial number of producers and importers who produce and import a substantial volume of flowers and plants.

(c) The secretary shall certify any organization which he finds to be eligible under this section and his determination shall be final. After the original certification of an organization, the Board may request and the Secretary may require recertification at any time.

Miscellaneous

§ 1290.180 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Floraboard shall be submitted to the secretary for his approval.

§ 1290.181 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of producers and importers voting in the referendum approving this subpart, to determine whether such producers and importers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart six months after he determines that its suspension or termination is approved or favored by a majority of the producers and importers voting in such referendum who, during a representative period determined by the Department, have been engaged in the production of flowers and plants and who produced more than 50 percent of the volume of flowers and plants produced by such producers voting in the referendum.

§ 1290.182 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board upon designation by the Secretary. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1290.145(f); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such

assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the trustees.

(d) Any residual funds or property not required to defray the necessary expenses of liquidation shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the flower and plant research or information programs hitherto authorized.

§ 1290.183 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any right or remedies of the United States, or of any person, with respect to any such violation.

§ 1290.184 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by an organization certified pursuant to § 1290.176 or by any interested person affected by the provisions of the order, including the Secretary.

§ 1290.185 Personal liability

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1290.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Copies of this notice of hearing may be obtained from the following parsons:

Laura Norden, Fruit and Vegetable Division, AMS, Room 2545–S, U.S. Department of Agriculture, Washington, D.C. 20250, or from "Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture" at any of the following locations:

William C. Knope, P.O. Box 9, Lakeland, Florida 33802;

David B. Fitz, 320 North Main Street, Room A–103, McAllen, Texas 78501;

Robert B. Case, New Customhouse, Room 365, 721 19th Street, Denver, Colorado 80202;

Roland G. Harris, 945 S. Figueroa Street, Suite 540, Los Angeles, California 90017;

Richard P. Van Diest, 1130 "O" Street, Room 3114, Fresno, California 93721;

William B. Blackburn, P.O. Box 255507, Sacramento, California 95825, or

Joseph C. Perrin, Boise-Cascade Building, Suite 805, 1600 S.W. 4th Avenue, Portland, Oregon 97201

(Title XVII of Pub. L. 97–98; 95 Stat; 7 U.S.C. 4301–4319)

Signed at Washington, D.C., on October 7, 1982.

Eddie F. Kimbrell,

Deputy Administrator, Commodity Services.

[FR Doc. 82–28121 Filed 10–8–82; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R–0413]

Truth in Lending; Treatment of Seller's Points

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of proposed rule and revisions to official staff commentary.

SUMMARY: The Board is withdrawing its proposal to amend Regulation Z (Truth in Lending) to require (1) seller's points to be included in the finance charge or (2) a disclosure that seller's points are involved in the transaction. The withdrawal is primarily a result of the comments received on the proposal, specifically the uncertainty concerning the extent to which seller's points are passed on to consumers and the consumer benefit of any action in this area, as well as the cost and disruption any action could impose.

EFFECTIVE DATE: September 29, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or Clarence B. Cain, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–2412 or (202) 452–3667. The final regulatory flexibility analysis may be obtained by contacting Fred B. Ruckdeschel, Economist, Regulatory Improvement Project, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–2579.

SUPPLEMENTARY INFORMATION: *General.* The Truth in Lending Act defines finance charges to include "all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit."[1] Under old Regulation Z, the Board took the position that if a lender imposed points on the seller and the points were in fact passed on to the buyer, the lender had to include them in the finance charge and in computing the annual percentage rate (APR) disclosed to the borrower.[2] The typical situation involved VA and FHA loans which allowed only one point to be passed on to the buyer; the remainder had to be paid by the seller. Some conventional transactions also involved points to be paid by the seller. Since it was difficult for a lender to determine whether a seller had increased the sales price—and, if so, by how much—lenders often made a presumption and either included the points in the finance charge or excluded them in all cases.

In revising Regulation Z (46 FR 20848, April 7, 1981) under the Truth in Lending Simplification and Reform Act (Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221, March 31, 1980), the Board sought to provide precise, simple rules as opposed to general statements that might create ambiguity, require additional regulatory clarification or generate litigation on technicalities. Applying this principle to the seller's points question, the Board decided to exclude them from the finance charge in all cases, even if they were passed along to buyers in a higher sales price.[3] This rule eliminated guess

[1] Section 106(a) of the Truth in Lending Act, 15 U.S.C. 1605.

[2] 12 CFR 226.406.

[3] Section 226.4(c)(5) of revised Regulation Z. Comment 4(c)(5)–1 of Official Staff Commentary, TIL–1, provides that the exclusion from the finance charge applies to "any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms."

work for lenders trying to determine if some or all of the points had been added to the sales price. The change was also based on the belief that the purchaser would understand that the sales price might be adjusted if the lender imposed charges on the seller.

Recently, a concern has been raised that the treatment of seller's points may have created a disclosure "loophole." The effect of the seller's points rule may in some circumstances result in an increase in the purchase price of the product without disclosure of the fact that the increase is related to the seller's cost of obtaining the reduced rate financing for the customer. In recognition of this fact, the Board considered a number of proposed rule changes. Based upon its review of these proposals, the Board has determined that no revisions to Regulation Z are necessary at this time. (A copy of the Final Regulatory Flexibility Analysis is available upon request.)

Proposals published. On July 27, 1982, the Board published for comment proposed alternatives that would amend revised Regulation Z and the Official Staff Commentary to address the seller's points issue (47 FR 32433). The notice published in the **Federal Register** included five alternative actions that could be taken to deal with the seller's points issue. The alternatives can be summarized as follows:

Alternative One would have reversed the current seller's points position and *required creditors to include seller's points in the finance charge and APR to the extent they are passed on to consumers.* In addition, the rule would have allowed creditors to always include seller's points in the finance charge whether or not they were in fact passed on.

Alternative Two would have continued the exclusion of seller's points from the finance charge but would have *required a new disclosure concerning seller's points in disclosure statements and advertisements* for reduced rate financing transactions. The disclosure would be (1) that the seller has paid money to obtain the financing; (2) the amount paid; and (3) that the payment, to the extent it has been passed on to the consumer in the form of a higher sales price or other charge, results in a higher cost of credit than that actually disclosed.

Alternative Three (included as significant alternative (a) in the Initial Regulatory Flexibility Analysis (IRFA) in the notice) would have *required a statement in advertisements and on the disclosure statement that the contract price may reflect any points passed on without specifying the dollar amount.*

Alternative Four (included as significant alternative (b) in the IRFA) would have *required a statement such as that in Alternative Three only in advertisements* and not on the disclosure statement.

Alternative Five (included as significant alternative (c) in the IRFA) would *retain the current treatment of seller's points and not impose any new requirement dealing with seller's points.*

Comments received. In response to the Board's proposal, approximately 350 comments were received. Approximately 60 percent of the comments were from creditors or their attorneys or trade associations. The remaining comments were from consumers, Reserve Banks, realtors, state agencies, law firms, consumer groups, and a legal services program.

Slightly more than half of the commenters urged the Board to take no action whatsoever in this area. The commenters opposing the proposed changes presented three major arguments. First, they argued that the Board should not amend the regulation so soon after going through the simplification process, particularly when the change reverses a position that was part of the simplification effort and that was made after throughtful consideration was given to the matter. In addition, an amendment before the regulation's October 1 mandatory effective date would signal that the Board would continue to make technical amendments each time a problem arose. Second, commenters argued that the first and second proposed alternatives were plagued with difficulties and failed to address the issue in a reasonable manner. Of particular concern to many was the extreme difficulty in determining the amount of seller's points passed on and the costs that could be associated with a change. Third, several commenters questioned the fairness of imposing substantial burdens on creditors for a practice or problem that is controlled by another party (that is, the seller) over whom they have little, if any, control.

Alternative One was chosen by relatively few commenters; those who supported it felt that it was the most appropriate method to show the true cost of credit. Twice as many of the commenters supported Alternative Two, largely because it did not contain the inherent problem of Alternative One of determining the *amount* of points being passed on.

A small number of commenters supported Alternative Three, particularly citing as its advantage over Alternative Two that the dollar amount of the points would not be required in the disclosure. A number of commenters supported a disclosure in only advertisements as a means of addressing the seller's points issue (Alternative Four). They argued that this would be less disruptive and costly, as well as more useful to the consumer because the information is provided early in the shopping effort.

A substantial number of comments were received from consumers. Virtually all of the consumers urged the Board to take some action to require disclosure of all credit costs in a transaction, although very few of them specified a particular alternative. A couple of consumers urged the Board to take no action.

Although the Board recognizes that at times consumers may be misled as to the separate cost of financing when credit costs are paid indirectly through an increase in the purchase price of the property, it does not believe that any of the alternatives to the current regulation provides a satisfactory solution to the problem.

Alternative One. Alternative One, in effect, would stipulate two methods of determining which rates will satisfy the advertising and disclosure requirements of Regulation Z. One method requires estimating the proportion of the seller's points that is passed on to the consumer and thus is treated as a prepaid finance charge in the calculation of TIL disclosures. The other method permits the entire amount of points to be treated as a prepaid finance charge.

Under the shopping goal of Truth in Lending, disclosure of credit costs on a comparable basis provides two benefits. First, disclosure increases the efficiency with which consumers use advertising to search for options. Second, it increases the efficiency with which consumers compare options. The treatment of seller's points in new Regulation Z can adversely affect consumers' search for options when all or a large portion of seller's points are passed on in a higher price. The bought-down APR can be advertised but the inflated price need not be. Thus, consumers may be induced through advertisements to spend scarce shopping time and effort gaining further information about deals that, upon comparison, turn out to be more costly. Alternative One would help remedy this problem when all or a large portion of points are passed on.

However, when a seller does not pass on points by raising the price or passes on only a small portion, then advertising of annual percentage rates (APRs) under new Regulation Z shows that the seller is willing to reduce the total cost of a transaction through subsidized financing. Under Alternative One, when creditors assume, contrary to the fact, that seller's points are passed on, advertised APRs would not reflect the interest-rate subsidy. Thus, under these circumstances, Alternative One would reduce consumer's ability to use advertising to direct their search efforts.

In order to assess the ultimate impact on the search process, it is necessary to take into account (1) the extent to which sellers are likely to pass on points to consumers and (2) the impact that Alternative One is likely to have on the behavior of creditors.

Little information is available to the Board on the extent to which sellers have been able to pass on points to consumers. However, under current economic conditions, it appears that in many cases sellers will be unable to increase prices sufficiently to pass on a large portion of seller's points. Many commenters affirmed that it would be extremely difficult to determine the extent to which points are passed on, although some felt it was likely that points are passed on to some extent.

The impact of Alternative One on sellers' and creditors' behavior is likely to arise from possible increases in costs in three areas. First, there are the costs of training personnel to treat all or part of seller's points as a prepaid finance charge. Second, there are costs of estimating the cash prices necessary to determine what portion of those points have been passed on to buyers in higher prices.[4] Third, and potentially most important, there is the cost to sellers and creditors that takes the form of an increased risk of litigation brought against them by consumers who claim that the passed-on portion of seller's points was underestimated. As several commenters noted, many sellers and creditors are likely to avoid the second and third kinds of cost by including the full amount of the points in the finance charge or by overestimating the portion of points passed on, whenever the cash price is not obvious. To the extent costs in these areas are incurred, creditors can be expected to attempt to recover them through higher interest charges.

When seller's points are not passed on entirely and creditors choose to avoid the cost of estimating the amount of seller's points passed on and the risk of litigation, consumers may be misled in their search activities under Alternative One. Advertised APRs for subsidized financing would be as high as market interest rates. As a result, this alternative may impair consumers' ability to identify lower cost alternatives by comparing advertisements.

Following their search effort consumers will attempt to choose the best combination of product and financing. The terms of the sales contract and the new Regulation Z disclosures provide a good deal of information for consumers to make informed financial decisions. The total cost of each possible transaction is fully reflected either by the price and bought-down APR or the downpayment and monthly payments (assuming contract maturity and downpayment percentage are constants). However, when seller's points are treated as a prepaid finance charge under Alternative One, a reduction in price is implied. But without knowing the implied price, the consumer will see the points double counted. That is, the points will be reflected in both the disclosed APR and in the contract price. As a result, consumers who rely on the proposed disclosure would overestimate the total cost of the transaction.

In summary, Alternative One would require APRs and finance charges to be restated to reflect the amount of seller's points passed on. When seller's points are largely or completely passed on, Alternative One could prevent consumers from being misled by advertisements during their initial search for attractive combinations of product and financing arrangements. But when seller's points are not passed on, as perhaps during times of economic distress, then the impact of Alternative One, through advertising, on consumers' search efforts depends on whether creditors and sellers choose to estimate the amount of points passed on or choose to treat the entire amount of points as a prepaid finance charge. If they try to determine the amount of points passed on, they would incur additional costs which would be borne indirectly by the consumer. If they treat the entire amount as a prepaid finance charge, as some commenters suggested they would, the APRs for subsidized financing would appear the same as those for unsubsidized financing. Consequently, consumers might have greater difficulty in searching for deals with subsidized financing.

Alternative Two. The warning statement required by Alternative Two would tell consumers the dollar amount of seller's points paid to the creditor and that the cost of credit is higher than that disclosed to the extent that points have been passed on to the buyer. The presence of a warning might induce consumers to devote greater attention to all details of reduced-rate financing plans. However, disclosure of the dollar amount of points would not give consumers adequate information to determine *whether* the seller has subsidized the financing or has passed on the points in the product price. In order to obtain this information, the consumer would have to compare various packages of price and annual percentage rate, which is the same task that the consumer would perform when directly evaluating the costs of alternative product and financing combinations. Moreover, the disclosure would introduce further complexity to Truth in Lending disclosures and could lead consumers to doubt the usefulness of the present TIL disclosures.

As many commenters noted, Alternative Two would impose some additional paperwork burdens on sellers and creditors. Sellers would have to adjust advertising copy to reflect the required statement. Creditors' forms also would have to be reprinted or overprinted with the statement about the seller's payment.

In summary, Alternative Two would alert consumers that the below-market financing cost might be accompanied by a correspondingly higher product price. This lack of definitiveness may lead consumers to question the value of the existing TIL disclosures, even when correct.

Alternative Three. Alternative Three is a modification of Alternative Two. This proposal would inform consumers that the seller has paid seller's points, but would not require disclosure of the dollar amount of points passed on to the consumer by the seller. It may induce consumers to devote greater attention to the details of reduced-rate financing plans.

Alternative Three is consistent with the views of many commenters on the problems associated with disclosure of the dollar amount of points. These commenters noted that accurate disclosure of the dollar amount of points paid would be difficult, particularly if it were required in advertisements. They noted that the amount of points is often determined quite late in the transaction when the loan amount and other information become known. For example, in some cases the amount of points paid by a home builder on a particular unit may be a function of the overall number of units sold in a project that use the reduced-rate financing. This type of agreement between the seller and creditor would make it virtually impossible to disclose the exact amount of points paid by customers who purchased in the early stages of a development.

Alternative Three is similar to Alternative Two in that both would require a statement as part of the Truth in Lending disclosures. Commenters

[4] Included here would be the cost to creditors of monitoring the extent to which negotiations between sellers and buyers have changed the characteristics of the houses being sold. For example, negotiated changes in landscaping, appointments, and other details, as well as settlement dates could affect the hypothetical cash price that the creditor must estimate.

noted that this requirement would impose additional training and paperwork costs. An objection to Alternatives Two and Three raised by commenters is that the required statement in Truth in Lending disclosures would normally come after the consumers have examined various product choices and made their final purchase decision. They argue that the disclosure at that point is unlikely to be useful to the consumer.

Alternative Four. Alternative Four would require sellers to disclose in advertising that seller's points have been paid and that they may be included in the purchase price. The objectives of this warning are to encourage consumers to consider both the annual percentage rate and purchase price in comparing alternatives and to aid consumers in deciding whether or not to seek additional information from particular creditors.

Alternative Four has several weaknesses. First, the warning directs consumers' attention to one of the costs incurred by the seller. The warning does not directly advise consumers to consider the purchse price and annual percentage rate; consumers would have to infer such advice from the warning.

Second, the warning informs consumers of the possibility that seller's points were passed on in product price; it does not indicate *whether* points have actually passed on. The warning would not enable consumers seeing advertisements for reduced-rate financing to distinguish between packages where points are passed on and packages with subsidized financing. Consumers would have to canvass sellers to obtain the product price and credit term information necessary to identify packages where points are passed on.

The costs of complying with Alternative Four would be lower than the costs associated with either Alternative One, Two or Three. However, in the Board's judgment, the costs incurred by advertisers covered under Alternative Four would outweigh the problematic benefits associated with this proposed modification to the regulation.

In conclusion, the Board has determined that no revisions to Regulation Z should be made at this time.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Truth in lending, Penalties.

By order of the Board of Governors of the Federal Reserve System, October 5, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-27834 Filed 10-8-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket No. 14322; Notice No. 75-9E]

Operations Review Program Completion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing completion of a Regulatory Review Program.

SUMMARY: With this notice, the FAA completes the Operations Review Program initiated in February of 1975. The purpose of this review was to update and improve: (1) Maintenance rules; (2) airmen certification rules; (3) selected air traffic and general operating rules; (4) rules for the certification and operations of air carriers, air travel clubs and operators for compensation or hire; and (5) rules for schools and other certificated agencies. This notice also announces the disposition of those Operations Review proposals which are not being addressed in the Operations Review Rulemaking.

FOR FURTHER INFORMATION CONTACT: Ida M. Cronauer, Regulatory Review Branch, ASF-410, Safety Regulations Division, Office of Aviation Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION: In recognition of the rapid growth and technological advances within the aviation industry of the United States and other countries, the FAA conducted an Operations Review Program. The FAA invited all interested persons to submit proposals to change the Federal Aviation Regulations involved for consideration as part of the regulatory process (see Notice 75-9, 40 FR 8685; February 28, 1975). In the notice, the FAA announced that it would make available for comment a Compilation of Proposals to be given further consideration as possible agenda items for an Operations Review Conference. The FAA announced availability of the Compilation of Proposals and invited all interested persons to submit comments on the proposals (Notice 75-9A, 40 FR 24041; June 4, 1975). In response to that invitation, over 5,000 proposed changes, contained in 123 submissions, were received by the FAA. An Operations Review Conference was held by the FAA December 1-5, 1975, in Washington, D.C. to obtain the views of those concerned on identified proposals from both the aviation community and the agency.

Notices of Proposed Rulemaking Issued

The proposals and related conference discussions culminated in 12 notices of proposed rulemaking:

Notice No. and Title and Federal Register (FR) Citation

75-38—Rotorcraft External-Load Operations (40 FR 54188; November 20,1975)
75-39—Clarifying and Editorial Changes (40 FR 57342; December 8, 1975)
76-20—Airspace, Air Traffic and General Operationg Rules (41 FR 46875; October 26, 1976)
76-28—Miscellaneous Proposals (41 FR 56280; December 27, 1976)
77-12—Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft (42 FR 37417; July 21 1977)
77-20—General Operating and Flight Rules and Related Airworthiness Standards (42 FR 44204; September 1, 1977)
78-3—flight Crewmembr Flight and Duty Time Limitations and Rest Requirements (43 FR 8070; February 27, 1978)
78-7—Certification and Operations: Domestic, Flag and Supplemental Air Carriers and Commercial Operators of Large Aircraft Certification and Operations of Scheduled Air Carriers With Helicopters (43 FR 20448; May 11, 1978)
78-11—Operations Review Program Notice No. 9 (43 FR 36464; August 17, 1978)
78-12—Airworthiness, Equipment, Certification, and Operating Proposals (43 FR 37958; August 24, 1978)
80-22—Operations Review Program Notice No. 12 (45 FR 76894; November 20, 1980)
81-1—Operations Review Program Notice No. 11 (46 FR 5484; January 19,1981)

Amendments Issued

Based on the comments received in response to the notices listed above and further review within the FAA, the following amendments were issued as part of this Operations Review Program:

Amendment No. and Title and Federal Register (FR) Citation

1—Clarifying and Editorial Changes (41 Fr 47227; October 28, 1976)
2—Rotorcraft External-Load Operations (42 FR 24196; May 12, 1977 and 42 FR 32531; June 27, 1977)
2A—Special Federal Aviation Regulation No. 36, Development of Major Repair Data (43 FR 3084; January 23, 1978)
3—Airspace, Air Traffic, and General Operating Rules (44 FR 15654; March 15, 1979)

4—Miscellaneous Amendments (43 FR 22636; May 25, 1978)
5—Certification and Operations: Domestic, Flag, and Suplemental Air Carriers and Commercial Operators of Large Aircraft (43 FR 22643; May 25, 1978, 43 FR 28403; June 29, 1978, and 44 FR 25201; April 30, 1979)
6—General Operating and Flight Rules and Related Airworthiness Standards and Crewmember Training (43 FR 46230; October 5, 1978)
8—Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft; Operation of Sheduled Air Carriers with Helicopters; and, Airworthiness Standards for Transpont Category Airplanes (FR 45 Fr 41586; June 19, 1980)
9—Operations Review Program: Amendment No. 9 (45 FR 46736; July 10, 1980)
10—Airworthiness, Equipment, and Operating Rules (44 FR 61323; October 25, 1979)
11—Operations Review Program: Amendment No. 11 (47 FR 3384; August 2, 1982)
12—Operations Review Program: Amendment No. 12: Aircraft Maintenance (47 FR 41076; September 16, 1982)

The FAA is compiling an index of proposals which will list each proposal made during the Operations Review, identify its proponent, state its disposition (adopted as a rule; removed from consideration; withdrawn by proponent; or transferred from the Operations Review) and state the volume number, page number, and date of publication of the Federal Register in which disposition was announced.

Persons interested in obtaining a copy of the index should contact the FAA Regulatory Review Branch at the address listed in the "FOR FURTHER INFORMATION CONTACT" paragraph.

Over the course of the Operations Review, a number of proposals were identified which had not been expressly cited in notices of proposed rulemaking or amendments, although the intent of the proposal was addressed or adopted during the Operations Review or other FAA rulemaking. The following is a list of these proposals and their disposition:

14 CFR (FAR)	Proposal	Disposition
Part 91	157	General Operating and Flight Rules (44 FR 4572; Jan. 22, 1979).
91.45	223	One-Engine Inoperative Ferry Flight Authorization (47 FR 25116; June 10, 1982).
91.170(a)	284	Operations Review Program Amendment No. 12, Proposal 12-18 (47 FR 41076; Sept. 16, 1982).
135.2	714	New Part 135 (43 FR 46742; Oct. 10, 1978).
Part 21	858A	Airworthiness Amendment No. 8A, Proposal 8-5 (45 FR 60156; Sept. 11, 1980).
121.311	438	Airworthiness Amendment No. 8, Proposal 8-117 (45 FR 7756; Feb. 4, 1980).

Several Operations Review Program proposals have not been disposed of in any of the previous 12 Operations Review notices of proposed rulemaking. Consequently, the following listing provides their disposition by category of action.

Proposals Withdrawn by Proponent

The following FAA proposals were withdrawn during or after the conference. The withdrawal of these proposals does not commit the FAA to any future course of action:

14 CFR (FAR)	Proposal No.	Proponent
43.7	22	Federal Aviation Administration.
Part 43 Appendix DF	61	Do.
Part 63 Appendix A	84	Do.
Part 65	90A	Do.
65.95	126	Do.
91.169(b)	280	Do.
91.176	301	Do.
91.181	306	Do.
105.15	340	Do.
121.391	496	Do.
121.472	556	Do.
121.627	615	Do.
135.43	732	Do.
145.51	879	Do.
Part 147 Appendix E and F	902	Do.
183.25	904	Do.

Proposals Removed from Consideration

Based on the FAA's review of the discussions at the Operations Review Conference and the information submitted by interested persons, the following proposals are removed from consideration for the reasons listed:

14 CFR (FAR)	Proposal	Proponent
65.95	127	Johnson and Johnson.
91.173	290	Sam J. Corso.
91.217(b)(1)	331	Air Transportation Association.

Proposal 127. This proposal would have revised § 65.95(a)(2) to allow holders of an inspection authorization to supervise inspections required under § 91.217(b)(2) through (5). These inspections may, under present rules, be done by certificated personnel who do not hold an inspection authorization. The proposal, if adopted, would allow personnel who do not hold a certificate to perform these inspections under the supervision of the holder of an inspection authorization. Inspection is critical to airworthiness and does not lend itself to supervision. Thus, the FAA concludes that an adequate level of safety would not be maintained if these inspections were performed by personnel who do not hold an appropriate certificate. The proposal is removed from consideration.

Proposal 290. This proposal would have amended § 91.173 by replacing the phrase "and other required or approved inspections as appropriate" with "inspections required in § 91.169." The recordkeeping requirements of § 91.173 apply to records of other inspections, in addition to those identified in § 91.169. Examples are records of inspections conducted under Part 125 and § 135.411(a)(1). The proposal, if adopted, would eliminate the requirement to keep records of these other inspections and would be in error. The proposal is removed from consideration.

Proposal 331. This proposal would have provided explicit authority for a part 121 operator with an approved continous airworthiness program to perform and sign for required maintenance and inspections when the aircraft is operated under part 91. The proposal does not specify what changes are to be made in the regulations. The implication, however, is that § 91.217, should be changed to authorize part 121 operators to accomplish inspections required by § 91.217(b)(1). Part 145 provides a method by which Part 121 operators can become eligible to perform these inspections. A Part 121 certificate holder, capable of performing these inspections, normally has sufficient personnel, facilities, and equipment to qualify for a repair station certificate under Part 145. The proposal is removed from consideration as unnecessary.

Proposals Transferred From the Operations Review

The following list of proposals are transferred from the Operations Review and will be considered in other rulemaking actions underway:

14 CFR (FAR)	Proposal	Consider under
43.7	21	License Avionics Specialists.
65.73	100	Do.
65.75	101	Do.
65.77	102	Do.
65.79	103	Do.
65.80	105	Do.
65.81	107	Do.
65.86	112	Do.
91.181(b)(6)	309	Part 91 Revision.
91.181(b)	310	Do.
91.181(a)(10)	313	Do.
91.181	314	Do.
91.181	315	Do.
91.186	317	Do.
91.188	318	Do.
91.189	319	Do.
91.209(a), (b)	328	Do.
91.211(a)	329	Flight Engineer Certification.
Part 91 Subpart J	326	Part 91 Revision.
Part 91 Appendix B	338	Do.
121.339	466	Part 120 Air Transportation Reg.
121.339(e)	473	Do.
121.387	490	Flight Engineer Certification.
121.415	513	Part 120 Air Transportation Reg.

14 CFR (FAR)	Proposal	Consider under
121.441(c)	548	Do.
121.57	599	Do.
121.613	606	Do.
121.619	610	Do.
121.623(a)	612	Do.
121.625	613	Do.
121.651(a)	622	Do.
Part 121 Appendix E	655	Do.
135.114	780	Do.
135.131(c)	788	Do.
135.138(b)	802	Do.
135.155	813	Do.
Part 135 Appendix A	820	Do.
143.4	849	Review of Parts 61, 141, 143.
143.25	855	Do.
143.26	856	Do.
143.28	857	Do.
147	891	License Avionics Specialists.
147.5	893	Do.
147.17	894	Do.
147.21	895	Do.
Part 147 Appendix E, F, and G.	903	Do.

Proposals Removed from Consideration Pursuant to Executive Order 12291

On February 17, 1981, the President issued Executive Order 12291 on "Federal Regulations" (46 FR 13193; February 19, 1981). Section 2 of the Executive Order specifies five general requirements for the rulemaking conducted by the Federal Departments and agencies. These requirements guide the FAA rulemaking activity. Among the requirements in Executive Order 12291 are: "(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;" and "(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future."

The following is a list of proposals considered during the Operations Review that are removed from further consideration because they do not meet the quoted requirements of Executive Order 12291:

14 CFR (FAR)	Proposal No.	Proponent
Part 43 Appendix D	58	E. C. Watson Jr.
65.87	113	Sam J. Corso.
65.91	115	Do.
65.91(b)(5)	116	Johnson & Johnson.
65.91(c)(5)	117	National Business Aircraft Association.
65.95	124	Sam J. Corso.
65.95	125	Do.
65.101	129	Do.
91 and 121	156	Association of Flight Attendants.
121.339	467	Do.
121.391(a)	493	Transport Workers Union.
121.472	555	Do.
121.482	558	Do.
121.571	583	Association of Flight Attendants.
121.573	591	Do.
121.576	598	Do.
Part 121 Appendix D	649	Do.
Part 121 Appendix D	650	Air Transport Association.
127,141	691	U. K. Civil Aviation Authority.
135.27	722	Sam J. Corso.
145.1	858B	Do.

(Secs. 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45)

Issued in Washington, D.C., on October 1, 1982.

William J. Sullivan

Manager, Safety Regulations Division.

[Fr Doc. 82-27996 Filed 10-8-82; 8:45am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-AWP-3]

Proposed Alteration of the Santa Barbara, CA, Additional Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice Proposes to amend the Santa Barbara, CA, Additional Control Area to provide additional controlled airspace west of the Vandenberg Air Force Base (AFB). This action would improve air traffic control service by increasing the amount of controlled airspace available for radar vectoring service.

DATE: Comments must be received on or before November 11 1982.

ADDRESS: Send Comments on the Proposal in triplicate to: Director, FAA Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 82-AWP-3, Federal Aviation Administration, 15000 Aviation Boulevard, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

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:

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-AWP-3." 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 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's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submittingd a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058 Communications must identify the 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 § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to lower the floor of the Santa Barbara, CA, Additional Control Area.

This action would designate additional controlled airspace west of Vandenberg AFB to provide for more efficient radar vectoring service to aircraft arriving or departing Vandenberg AFB. This additional controlled airspace will also be available to the Los Angeles Air Route Traffic Control Center (ARTCC) for civil use. Under existing airspace, radar service is unduly restricted by minimum vectoring altitudes which are too high for practical use in this area. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3 dated January 29, 1982.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided, and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Additional control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Santa Barbara, CA [Amended]

By deleting the period after the word "boundary" and adding the words ", except, that airspace extending upward from 2000 feet MSL within the area bounded by a line beginning at lat. 34°57'30" N., long. 121°15'00" W.; to lat. 35°06'17" N., long. 120°54'55" W.; to lat. 34°56'30" N., long. 120°43'30" W.; thence via a line 3 nautical miles west of and parallel to the shoreline to lat. 34°24'00" N., long. 120°30'00" W.; to lat. 34°23'00" N., long. 120°30'00" W.; to lat. 34°19'00" N., long. 120°45'00" W.; to lat. 34°50'00" N., long. 121°10'00" W.; thence to point of beginning."

(Secs. 307(a), 313(a), and 1110, 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. 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 Washington, D.C., on October 4 1982.

John W. Baier,

Acting Manager, Airspace and Air Traffic Rules Division.

[FR Doc. 82-28000 Filed 10-8-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368-399

Export Administration Regulation; Agency Review under Executive Order

AGENCY: Office Export Administration, International Trade Administration, Commerce.

ACTION: Advance Notice of Proposed Rulemaking Request for Public Comments.

SUMMARY: On April 30, 1982, the Office of Export Administration (OEA) requested public comments on a proposed simplification of the Export Administration Regulation (47 FR 18613-18614). This simplification is being conducted in compliance with Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation." The public was asked to limit comments to suggestions on how to simplify language and format and how to reduce documentation.

OEA now invites the public to suggest topics for consideration during an upcoming review of export licensing policy and practices.

DATE: Comments regarding this proposal must be received by December 13, 1982.

ADDRESS: Written comments (five copies/enclosures) should be sent to: Richard J. Isadore, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

A current version of the Export Administration Regulations may be inspected at: Exporters' Service Staff, Office of Export Administration, Room 1099, U.S. Department of Commerce, Washington, D.C. 20230, or any Department of Commerce District Office.

FOR FURTHER INFORMATION CONTACT: Richard J. Isadore, (202) 377-4188.

SUPPLEMENTARY INFORMATION:

Public Comments

The period of submission of comments will close (60 days after publication). All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary

nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001B, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

The Office of Export Administration (OEA) invites the public to submit suggestions on how to simplify current export licensing policy, reduce documentation and recordkeeping requirements, and ease the regulatory burden on small businesses.

Topics that may be considered by OEA in the policy review include, but are not limited to, the following:

1. Alternatives to the present system of Country Groups.

a. Control exports on a country-by-country basis as opposed to a country group basis.

b. Set groups for Free World, Controlled, and Embargo destinations.

c. Eliminate COCOM countries from export license requirements.

d. Other alternative methods of export controls.

2. Documentation.

a. Require only documentation agreed to by international agreements.

b. Require more or less documentation for selected countries.

c. Other alternatives.

3. Order Requirement.

a. Require an order for all applications.

b. Require an order with exceptions granted on a case-by-case basis.

c. Require an order except with specified exceptions, which are enumerated.

d. Drop the order requirement.

4. Alternatives to present unilateral controls on exports.

Advantages/disadvantages of having only multilateral controls.

5. Consideration of whether bulk licensing procedures should be modified.

6. Consideration of eliminating, modifying, or combining certain of the forms now required by OEA.

The following Parts of the current Regulations are excluded from the upcoming policy review:

Part 369, Restrictive Trade Practices or Boycotts, which was revised in 1978;

Part 377, Short Supply Controls and Monitoring, which will be considered separately; and

Parts 387, Enforcement; 388, Administrative Proceedings; and 389, Appeals, which were revised in 1980.

OEA suggests reading the **Federal Register** notice of April 30, 1982 (47 FR 18613–18614) for more information on the purpose of the regulatory simplification. That Notice also lists issues to consider when reviewing the present organization, documentation requirements, and economic impact of the Export Administration Regulations.

Authority: Secs. 12, 13, Pub. L. 96–72, 50 U.S.C. App. 2401, *et seq.;* Executive Order 12214 (May 6, 1980).

Date: October 1, 1982.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 82–27811 Filed 10–8–82; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–089 (Louisiana—3 Addition) et al.]

High-Cost Gas Produced From Tight Formations; Rescheduling Public Hearing

October 6, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of public hearing on proposed rules; rescheduling of hearing date.

SUMMARY: On September 17, 1982, the Commission issued a Notice of Public Hearing on Proposed Rules involving high cost gas produced from tight formations (47 FR 41987, September 23, 1982). The public hearing is being rescheduled at the request of Southern California Gas Company and Pacific Lighting Gas Supply Company.

DATES: The public hearing is rescheduled for Friday, November 12, 1982, at 9:00 a.m.

Requests to participate and amount of time requested should be filed on or before October 29, 1982.

ADDRESS: Submit requests to participate to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357–8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–27978 Filed 10–8–82; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–140 (Texas—11 Addition III)]

High-Cost Gas Produced From Tight Formations; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission.

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 contains the recommendation of the Railroad Commission of Texas that an additional area of the Wilcox Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 22, 1982.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 21, 1982.

ADDRESSES: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

In the matter of High-Cost Gas Produced from Tight Formations; Notice of Proposed Rulemaking By Director, OPPR.; Docket No. RM79–76–140 (Texas—11 Addition III); Issued October 6, 1982.

I. Background

On September 8, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 F.R. 56034, August 22, 1980), that an additional area of the Wilcox Formation located in Zapata County, Texas, be designated as a tight formation. The Commission previously adopted recommendations that portions of the Wilcox Formation in Webb and Starr Counties, Texas, be designated as tight formations (Order Nos. 199, 208 and 241 issued December 16, 1981, February 5, 1982 and July 8, 1982, respectively, in Docket No. RM79–76 (Texas—11)). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Wilcox Formation in the Taquachie Creek (Wilcox 11,162) Field be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Wilcox Formation in the area of the Taquachie Creek (Wilcox 11,162) Field in the northeastern portion of Zapata County, Texas, Railroad Commission District 4, be designated as a tight formation. The area recommended is approximately 7 miles south of Mirando City, Texas, and is within a 2.5 mile radius around the Blocker Exploration Company No. I–252 L. Armour Hinnant well, located in Section 252, Robert Hinnant Survey, A–509. The top of the recommended formation is log-measured at approximately 11,162 feet and extends to 11,200 feet giving a total thickness of 38 feet in the Blocker Exploration Company No. I–252 L. Armour Hinnant well, which has the only completion in the recommended formation.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recomendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations asssure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Wilcox Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 22, 1982. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–140 (Texas—11 Addition III), and should give reasons including supporting data for any recommendation. 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 Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than October 21, 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 Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271 [AMENDED]

Section 271.703 is amended by adding paragraph (d)(63)(iv) (A) and (B) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(63) *Wilcox Formation in Texas.* RM79–76 (Texas—11). * * *

(iv) *Taquachie Creek Field.*

(A) *Delineation of formation.* The Wilcox Formation found in the area of the Taquachie Creek (Wilcox 11,162) Fied, Zapata County, Texas, is located approximately 7 miles south of Mirando City, Texas, and is within a 2.5 mile radius around the Blocker Exploration Company No. 1–252 L. Armour Hinnant well.

B. *Depth.* The top of the Wilcox Formation, Taquachie Creek (Wilcox 11,162) Field is log measured at approximately 11,162 feet and extends

to 11,200 feet, resulting in a total thickness of 38 feet.

* * * * *

[FR Doc. 82-28024 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-5-FRL 2224-5]

Ohio's Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of application.

SUMMARY: The State of Ohio has submitted a request to the United States Environmental Protection Agency (U.S. EPA) for approval to expand its National Pollutant Discharge Elimination System (NPDES) program to include Federal facilities. According to the State's proposal, the Federal facilities program would be administered by the State of Ohio Environmental Protection Agency. This notice provides for a comment period on Ohio's request. Under EPA regulations the Administrator shall approve or disapprove this request after taking into consideration all comments received.

Interested persons may also request a public hearing on the State's request. If there is a significant public interest expressed in the comments, U.S. EPA will schedule such a hearing. In the event U.S. EPA determines to hold a public hearing prior notice of the date, time and location of such a hearing will be given.

DATE: To be considered comments must be received on or before November 12, 1982.

All requests for a public hearing must be submitted on or before the expiration of the comment period.

ADDRESS: Comments or requests for hearing should be addressed to: U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, Attention: Permits Section (5WQP).

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn T. Gardner, NPDES Permits Section, Public Notice Clerk (5WQP), U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 353-2105.

SUPPLEMENTARY INFORMATION: On October 18, 1972, Congress passed the Federal Water Pollution Control Act Amendments of 1972, (33 USC §§ 1251-1376, Supp. 1973; hereinafter "the Act"). This legislation established the NPDES permit program under which the Administrator of the U.S. EPA, or an approved State, may issue permits to municipal, industrial, and agricultural entities to control the discharge of pollutants into navigable water.

On March 11, 1974, when Ohio's NPDES program was approved, Federal law prohibited State regulation of Federal facilities (33 U.S.C. 1323(a)), and U.S. EPA retained responsibility for these facilities. The 1977 amendments to the Federal law removed this bar to full State regulation of all potential sources of water pollution within its boundaries.

The Ohio Environmental Protection Agency has requested authority to issue permits to Federal facilities and has submitted a signed statement from the Ohio Attorney General that the Ohio Environmental Protection Agency has the necessary authority.

The Administrator's decision to approve or disapprove the proposed expansion will be based on a determination of whether the proposed program expansion meets the requirements of the Clean Water Act and 40 CFR Part 123 and on the comments received.

The Ohio submission may be reviewed by the public from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays, at the Ohio Environmental Protection Agency at 361 East Broad Street, P.O. Box 1049, Columbus, Ohio, 43216 and at the U.S. EPA office in Chicago at the address appearing at the beginning of this Notice. Copies of the submittal may also be obtained (at a cost of (b) 20 cents a page) from these offices.

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 123

Hazardous materials, Indians—lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: September 28, 1982.

Valdas V. Adamkus,

Regional Administrator, Region V.

[FR Doc. 82-27873 Filed 10-8-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 420

Medicare Program; Access to Books, Documents and Records of Subcontractors

AGENCY: Health Care Financing Administration (HCFA) HHS.

ACTION: Proposed Rule

SUMMARY: This proposal would implement section 952 of the Omnibus Reconcilation Act of 1980 (Pub. Law 96-499), which conditions Medicare reimbursement for the cost of services performed under certain contracts upon compliance with prescribed criteria. If a contract between a provider and a subcontractor covers services valued at or costing $10,000 or more over a 12-month period, Medicare reimbursement cannot be made for the services unless the contract includes a clause allowing the Secretary of Health and Human Services and the Comptroller General and access to the contract and to the subcontractor's books, documents and records necessary to verify the costs of the contract. The clause in the contract must also permit similar access to any subcontract between the subcontractor and a related organization of the subcontractor when the subcontract is worth or costs $10,000 or more over a 12-month period. This proposal specifies the criteria and procedures that the Department would use to obtain access to affected books, documents and records.

The purpose of the legislation and these proposed regulations is to permit the Secretary and Comptroller General to make an accurate determination of the reasonable costs under these contracts.

DATE: To assure consideration, comments should be mailed by December 13, 1982.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., S.W. Washington, D.C., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BQC-14-P.

Comment will be available for public inspection, beginning approximately two

weeks after publication, in Room 309–G of the department's office at 200 Independence Ave., S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Ron Galler, (301) 594–8833.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, the amount paid to a provider of services is the reasonable cost of items and services furnished to beneficiaries. While section 1815(a) of the Social Security Act requires a provider to make available to it intermediary financial and other books and records so that the reasonable cost of services it has provided may be determined, we have not had the same access to the records of a provider's subcontractors.

Section 952 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) amended section 1861 (v)(1) of the Social Security Act by adding a new paragraph (I). The new provision requires that, in order for the costs of services furnished under a contract between a provider and subcontractor to be included as reasonable costs for Medicare reimbursement purposes, the contract (if its costs or value over a 12-month period is $10,000 or more) must contain a clause allowing the Secretary of the HHS and the Comptroller General to have access, upon request, to the contract, and to the books, documents, and records of the subcontractor that are necessary to verify the costs of services furnished under the contract. The contract must provide for the access until the expiration of four years after the services are furnished under the contract. In addition, the contract must allow similar access to contract of a similar nature, and costs or value, between subcontractors and related oranizations of the subcontractor, and to their books, documents, and records. The statute requires that the Secretary's request for books, documents, and records must be in writing and that the Secretary must specify in regulations the criteria and procedures he will use in obaining that access. This section became effective on December 6, 1980.

In the legislative history to Section 952 of the Omnibus Reconciliation Act, the House Committee on the Budget (See H.R. Rep. No. 96–1167, p. 395) noted that, unlike contracts for goods, contracts for services can pose difficult valuation problems. Consequently, without access to subcontractors' books, documents and records, the detection and prevention of fraud and abuse can be difficult. The Committee stated its belief that the provision was necessary both to strengthen the Secretary's capacity to preclude or detect fraud and abuse effectively and to conform Medicare practice to that of other Federal agencies that buy services in the private sector. The report states that the provision is moderate in scope since it includes only contracts that have a substantial service component. However, the Committee noted that its intent was not to subject subcontractors to "fishing expeditions" or other unnecessarily burdensome or overly intrusive demands; the Secretary and the Comptroller General are to avoid demanding books, documents and records of a subcontractor unless they have reason to believe that the costs of services of the contractor are in some way excessive or inappropriate, or the appropriateness of those costs cannot be judged without access to the specific books, documents and records requested.

In addition to the legislative history, there was a further clarification from the Oversight Subcommittee of the House Ways and Means Committee on April 13, 1981 that stated that the principal reason for this provision stemmed from complaints of Medicare intermediaries that they were often unable to determine reasonable costs of providers because these costs were hidden in subcontractual arrangements. Accordingly, the Subcommittee expected that, by use of this provision, intermediaries should exercise the right to access whenever cost report information submitted by the provider regarding any subcontract is out of line to such an extent that, in the absence of a subcontract, intermediaries would have typically sought additional cost information from the provider in the form of a specific request or an audit.

The statute contains no requirement for the Comptroller General to publish regulations in order to gain access to the subcontractor's contract, books, documents and records and those of its related organizations. Therefore, these proposed regulations address only that part of the provision for which the Secretary is responsible, except that they require the access clauses to provide also for access by the Comptroller General and his authorized representatives.

II. Provisions of the Regulations

The proposed regulations would add a new Subpart D, Access to Books, Documents and Records of Subcontractors, to 42 CFR Part 420, Program Integrity.

Note.—The words "we" and "HHS" refer to HHS, HCFA, HCFA's intermediaries, and to the Inspector General for HHS.

A. Definitions

1. "Books, documents, and records": We propose to include all writings, recordings, transcriptions and tapes of any form in the concept of books, documents and records.

2. "Provider": We propose to use the current Medicare definition of "provider": a hospital, skilled nursing facility, home health agency, or comprehensive outpatient rehabilitation facility. This definition is consistent with that of section 1861(u) of the Act and includes most entities that are reimbursed on a cost basis and that submit annual cost reports. In addition, this definition, for purposes of these regulations, would include "related organizations" of providers, as defined by 42 CFR 405.427.

3. "Subcontractor": We propose to define a subcontractor as any entity, including an individual, that contracts with a provider to supply a service or services to the provider or directly to a beneficiary, for which Medicare may pay the provider the cost of the services. The term "subcontractor" would include organizations related to the subcontractor that have contracts with the subcontractor that are subject to the statute.

"Related to the subcontractor" would mean that the subcontractor is related to an organization by common ownership or control; the subcontractor, to a significant extent, is associated or affiliated with, owns or is owned by, or has control of or is controlled by, the organization furnishing the services, facilities, or supplies.

"Common ownership" would mean that an individual or individuals possess significant ownership or equity in the subcontractor and the entity providing the services under the contract.

"Control" would mean that an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

The definitions of "related to the subcontractor," "common ownership" and "control" parallel the definitions of "related to the provider," "common ownership" and "control" in current regulations at 42 CFR 405.427.

4. "Contract for services": Contracts for services are those through which a provider obtains the performance of an act or acts, as distinguished from supplies or equipment. That is, the regulations would not apply to contracts

purchasing tangible materials only, but rather to contracts that purchase services such as consultations, management, and medical care provided by physician groups (for which we may reimburse the provider on a cost basis). (This is the definition we recommended in Intermediary Letter 81–19, August 1981.) Contracts for services such as linen services (rental of linens), the furnishing of meals (as opposed to the direct purchase of food), and services supplied through contracts with law firms and accounting firms would also be examples of contracts for services that would be included. We would also include contracts for services furnished by provider management companies and provider management information systems companies.

Subcontracts for public utility services at rates reestablished for uniform applicability to the general public would not be subject to these regulations because the rates are already a matter of public record and are not negotiable.

Services provided incidental to the purchase of a product would not be services for purposes of this regulation. For example, contracts concerning construction of buildings would not be covered by the regulations, as the sole purpose of these contracts is to produce tangible material items (that is, buildings).

5. "Contracts for goods and services": In those contracts for goods that also contain a significant service component (that is, the cost or value of the services is at least $10,000 over a 12-month period) the access provision applies but access would be directed to verification only of the nature and extent of the costs of the services and not of the costs of the goods.

B. Application

1. *Contract Provisions.* The regulations would require any contract for services, the value of which is $10,000 or more in a 12-month period, to provide the Secretary, upon written request, and the Comptroller General to have access to the contract and to the subcontractor's books, documents, and records necessary to verify the costs of the contract. They would also require the contract to provide for the access to the contract, books, documents, and records until the expiration of four years after the services are furnished under the contract.

The contract must also provide that if the subcontractor carries out any duties of the contract through a subcontract, with a value or cost of $10,000 or more over a 12-month period, with a related organization, the subcontract must contain a clause to the effect that the related organization must make available, upon written request, to the Secretary, or upon request to the Comptroller General, or their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to verify the nature and extent of the costs. The provision in the contract must also provide for the access until four years have expired after the services have been furnished.

In practice, it would usually be the provider's intermediary (or carrier), acting on behalf of HCFA, that would request and gain access to the contracts, books, documents, and records. The intermediary is ordinarily in the best position to know whether costs need verifying and what information would be necessary to verify them. There may, however, be occasions when the request for records would be made by the Office of the Inspector General or HCFA on behalf of the Secretary.

We would assume contracts for services cost or are valued at $10,000 or more in a 12-month period even if the contract does not specify 12 months as its duration or if its cost or worth is less than $10,000 in a period of less than 12 months but there is more than one such contract so that the total cost is $10,000 or more in 12 months. For example, a contract that costs $12,000 for services that are completed in two months or a contract for $18,000 that covers a 18-month period would be subject to these regulations, as would a series of contracts for $10,000 each for 10 months each (that is, each of these contracts would amount to $12,000 in a 12-month period and thus would be subject to the statute). In order to implement the statutory intent, amounts incurred under contracts made for less than a full year would be recalculated to determine their cost for a full year to determine if the statutory requirement applies.

2. *Written Contracts.* While developing this regulation, we were advised that in a number of situations there exists a tradition of oral contracts between providers and their subcontractors (for example, contracts between providers and law firms or accounting firms, and contracts between providers and their ongoing suppliers or services). While we do not desire to amend the business practices of providers by requiring written contracts, we believe that the language of the statute that requires the inclusion of an access clause clearly indicates that the Congress expected the contracts affected by the provision to be written contracts. It must further be recognized that the underlying purpose of this provision was to strengthen the Secretary's ability to protect against fraud and abuse in the Medicare program. This protection could hardly be assured if the contract were oral and the Secretary or Comptroller General required access to that contract, and to the books, documents, and records necessary to certify the nature and extent of the costs of the services provided under the contracts.

As a result, in order to satisfy the requirements of the statute, the regulations would require that a contract falling under the provisions of this section of the statute must be in writing in order for the services performed under the contract to be reimbursable by the Medicare program. Oral contracts entered into before December 6, 1980, that are renewed after that date would have to be reduced to writing to conform with the law and the regulations.

3. *Value of services.* If a contract is for both goods and services, the provider and subcontractor will have to determine whether the service component is $10,000 or more, to evaluate the worth of the services. If an allocation is made between depreciation base and service components on books, the allocation should be consistent with the principle used to determine the value of the service component.

If the contract does not specify the cost or valuation of the services or service component involved, the provider should anticipate whether the services' value will be $10,000 or more. Assuming the contract does not contain a cost or valuation or the services and does not include the access clause, if we determine that the contract is subject to the statute, the provider will risk not being reimbursed for the reasonable cost of the services under Medicare unless he meets the good faith showing that would allow him to modify the contract.

When a provider contracts to purchase a product that includes a warranty of the product in the price, the contract would not be subject to these regulations since there is no way to determine the cost of the service component. However, a separately purchased warranty, or a "service-maintenance" contract would have to contain the access clause, if it is for $10,000 or more for a 12-month period.

4. *Implementation date.* Contracts that are entered into or renewed after December 5, 1980, are subject to the statutory requirements. Contracts in existence before December 6, 1980 that are automatically renewed on or after that date would have to be amended to incorporate the access clause at least by the renewal date.

Under Section 1861(v)(1)(I) of the Act, HCFA cannot request or require access to a subcontractor's books, documents and records until the regulations implementing the statute become final. However, the fact that we cannot request or obtain access until the regulations become final does not relieve a provider and its subcontractor from the responsibility of including the access clause in any contract subject to the statute. (The Comptroller General has had the authority to request or require access since December 6, 1980.)

We realize that there are providers that have been or will be unable to obtain their subcontractor's agreement to include the clause in their contracts before the regulations are final. In such instances, the providers would have to review their contracts after the regulations become final and amend any that do not contain the access clause. Failure to amend the contracts could mean that intermediaries would be unable to reimburse the providers the cost of services furnished under the unamended contracts.

All contracts subject to the statute entered into after the date of publication of the final regulations must contain the access clause. We urge that a provider that has any doubt as to whether the access clause should be inserted into a specific contract to include the clause in the contract.

C. Criteria for Requesting Records

The statute requires the Secretary to prescribe by regulation the criteria and procedures to be used in obtaining access to books, documents, and records. The criteria we intend to apply in determining the need for access to these materials would reflect Congressional concern that subcontractors not be subjected to "fishing expeditions" or other unnecessarily burdensome or overly intrusive demands. Generally, we would expect to request access only if there arises one of the situations below. We would limit our request to books, documents and records that we determine are germane to the cost items in question. Examples of such situations would include those in which the question of the nature and extent of costs under the contract cannot be resolved without access to books, documents or records, such as the following: situations potentially involving kickbacks, bribes, rebates or other illegal activity; those in which there is an indication of a possible nondisclosure of a related organization; those in which there is reason to question whether the services furnished under the contract were excessive or inappropriate; and those in which there is insufficient information to judge the appropriateness of the costs of the services involved.

We do not intend to establish criteria whose presence would automatically trigger a request to gain access to a subcontractor's books, documents, and records, since this decision is essentially judgemental and involves evaluating all factors in a given situation. The basic question that we plan to consider before requesting a subcontractor's document, book or record is: is there any other more efficient, more practical, or more economical method of obtaining the necessary information, or are there any other books, records or documents available that could be used for judging the costs under the subcontract? If so, we would ordinarily attempt to obtain access to the information by those means before seeking to gain access to the records of the subcontractor.

D. Procedures for Requesting Books, Documents and Records

If we decide to verify the nature and extent of the costs under the subcontract by examining the subcontractor's books, documents, and records, we would request those materials from the subcontractor in writing. The request would contain at least the following elements:

(a) Reasonable identification of the books, documents, or records to which access is being requested;

(b) Identification of the contract whose costs are being questioned as excessive or inappropriate;

(c) The reason that the appropriateness of the costs of the services of the subcontractor in question cannot be decided without access to the subcontractor's books, documents and records;

(d) The statutory and regulatory authority for the access requested;

(e) To the extent possible, the identification of those individuals who will be visiting the subcontractor to review the books, documents, and records;

(f) The proposed time and date of the scheduled visit; and,

(g) The name of the duly authorized representative of HHS to contact if there are any questions.

E. Response To Access Request

Under the proposed regulations, when a subcontractor receives a written request for records, the subcontractor would have 30 days for making the requested books, documents and records available. If the subcontractor believes that the request does not contain in sufficient detail the required elements listed in paragraph D above, the subcontractor would have 20 days from the date of the request to advise us in writing of the additional information needed. If necessary, we would perfect the request to the extent that it properly contains the elements contained in paragraph D. The subcontractor would have 20 days after we respond to make the books, documents, and records available.

We would ordinarily require the subcontractor to make the requested books, documents and records available for inspection, audit, or reproduction at regular business hours at the office of the subcontractor. All contracts, books, documents, and records, whether requested or not, must be available until four years after the services are furnished under the contract. We would pay the cost of records duplicated at our request; if the subcontractor chooses to comply with a request by furnishing duplicate copies, the subcontractor would assume the cost. When the subcontractor's books, documents and records are not readily available (for example, they are at a home office or in storage) and there will be a delay in retrieving them, the subcontractor would have to advise the requesting organization in writing. It would then be up to the requesting organization to agree to the date the subcontractor would make the books, documents and records available; if the requesting organization does not agree, there could be a delay or denial of reimbursement of the cost of the services.

F. Refusal by Subcontractor To Furnish Access to Records

If the subcontractor fails to honor the access clause in the contract in accordance with the provisions of the statute and these regulations, we would initiate legal action against the subcontractor.

Concurrently, we would advise the provider of the failure of the subcontractor to make available the requested materials so that the providers may take whatever action (for example, withholding of any balances due the subcontractor under the contract) it considers necessary for its financial protection.

G. Access Provision Not Included in Contract

If we find that a contract subject to the access requirement does not contain the necessary provision, we would consider the intent of the Congress in enacting this provision before deciding on remedial action. Although it is clear from the statute that we may not

reimburse costs incurred under a contract subject to the statute unless the contract contains the access clause, we believe that the Congress intended that the provision should be used to provide access to contracts, books, documents, and records when necessary and did not intend it to be used to penalize providers that inadvertently omitted the required provision from a covered contract, but obtained access of the required materials in a timely and otherwise satisfactory manner.

Therefore, when we discover that a contract subject to the requirements lacks the access provision, we would not automatically deny reimbursement of the costs of the subject contract. Rather, we would request the provider to furnish the reason for its omission. If the reply were to indicate good cause on the provider's part, the provider would be given the opportunity to amend the contract to include the required access clause so that any contracts, books, documents, and records that may be required may be obtained. We are not defining "good cause"; since there are so many varying situations that could constitute good cause, we believe that it should be based on our best judgment after considering all the facts. If we found good cause existed, we would advise the provider that if it is to be reimbursed for the services, the contract would have to be amended within 60 days.

If the provider did not amend the contract within that time, and in cases where we did not find good cause for the omission, we would deny reimbursement to the provider for the cost of the services provided under the contract.

III. Refusal by Subcontractor to Insert Clause

There may be situations in which a subcontractor will refuse to enter into a contract containing the required access clause. We believe that the provider will ordinarily have little difficulty in finding another organization that will agree to the clause and that offers and that offers the services needed by the provider at a cost that is at least competitive with that of the noncooperative organization.

However, if the provider believes that the original proposed subcontractor is the only one that can supply the service needed, or supply it at the lowest cost, the provider may wish to contact the HCFA Regional Administrator for the State in which the provider is located. The Regional Administrator will explain the need for and purpose of the access clause to the subcontractor and attempt to obtain agreement. (A provider that does not notify the Regional Administrator but instead, on its own initiative, contracts with a more expensive subcontractor or omits the access clause, risks not being reimbursed for the full cost of the services furnished under the contract.)

If the Regional Administrator's effort to persuade the potential subcontractor to include the required access clause is unsuccessful, and no other subcontractor is available who can furnish the services at a competitive price and who will agree to the access provision, the provider may find it necessary to contract with another organization willing to accept the access clause, even though the cost of the services may be greater. In this case, the provider may wish to obtain the approval of the intermediary before entiring into the contract, in order to assure that the greater cost incurred by the provider will be considered by the intermediary during the cost report settlement process.

IV. Confidentiality Of Records

Any contract, books, documents or records requested under the proposed regulations would be furnished directly to HCFA (to the intermediary in most cases), and not the provider. The materials we receive may be subject to disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552), if requested by a member of the public.

If a member of the public requests a subcontractor's contract, books, documents, or records in our possession, we would apply the same criteria to determine their disclosability that we apply when someone requests a provider's records. In general, we could claim exemption from disclosure of those portions of a subcontractor's contract, books, documents and records that are determined to be trade secrets and commercial or financial information that is privileged or confidential; the FOIA permits us to claim exemption of such information from disclosure where it would be appropriate to do so. We would expect to use this exception to seek to prevent disclosure of appropriate portions of the subcontractor's materials in our possession, if we received any requests under the FOIA. There are also other exceptions, which we would use as appropriate, such as the exemption of personal information, the disclosure of which would be a clearly unwarranted invasion of privacy.

It is our opinion that the access clause also applies to contracts for services between providers and their law firms and accounting firms. In any case in which access of these firms' contracts, books, documents and records was sought, any examination of records by HCFA would be for the sole purpose of determining that payments made under the Medicare program are proper and would not normally include examination of those records considered privileged under any existing attorney- or accountant-client privilege.

V. Impact Analysis

Executive Order 12291

The Secretary has determined that the proposed regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, the proposed regulations will not—

Have an annual effect on the economy of $100 million or more;

- Results in a major increase in costs or prices for consumers, any industries, any government agencies or any 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 import markets.

The proposed regulations would not meet the criteria for a major rule. The only new costs involved would be those required for litigation in the rare case that a subcontractor refused us access to its records, as well as the more frequent costs invoved in our inspection of records. None of these costs would be significant.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility (Pub. L. 96–354), that these regulations will not have a significant impact on a substantial number of small entities.

The only economic impact on subcontractors would be on those that refuse to include the access provision in their contracts. The economic impact on providers, basically, would be for those providers that, without good cause, do not obtain their subcontractor's agreement to include the access provision in contracts: they would lose reimbursement for the services. Since we do not expect a significant number of subcontractors to refuse to include the provision in their contracts, we do not expect that a significant number of subcontractors and providers to be adversely affected by these regulations.

Accordingly, a regulatory flexibility analysis will not be required.

VI. Response To Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

List of Subjects in 42 CFR Part 420

Abuse, Administrative practice and procedure, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Information (Disclosure), Lawyers, Medicaid, Medicare, Penalties, Professional Standards Review Organizations (PSRO), Reporting requirements, Supervision.

42 CFR Part 420 is amended as set forth below:

PART 420 [AMENDED]

1. The table of contents is amended by adding Subpart D to read as follows:

Subpart D—Access to Books, Documents and Records of Subcontractors

Sec.
420.300 Basis, purpose, and scope.
420.301 Definitions.
420.302 Requirement for access clause in contracts.
420.303 HHS criteria for requesting books, documents and records.
420.304 Procedures for obtaining access to books, documents, and records.

Authority: Secs. 1102, 1861(v), 1862(d), 1862(e), 1866(b), 1871, 1902(a) and 1903(i) of the Social Security Act (42 U.S.C. 1302, 1395x(v), 1395y(d), 1395y(e), 1395cc(b), 1395hh, 1396a(a), and 1396b(i)).

2. A new Subpart D is added to read as follows:

Subpart D—Access to Books, Documents, and Records of Subcontractors

§ 420.300 Basis, purpose, and scope.

This subpart implements section 1861(v)(1)(I) of the Act, which requires, for Medicare payment under certain provider contracts, access by the Secretary, upon written request, and the Comptroller General, and their duly authorized representatives, to certain contracts for services and to books, documents and records necessary to verify the costs of the services. The contracts affected are those between providers and their subcontractors, and between the subcontractors and organizations related to the subcontractor by control or common ownership. It also specifies the criteria by which HHS will determine whether to request access to books, documents, and records.

§ 420.301 Definitions.

For purposes of this subpart—

"Books, documents and records" means all writings, recordings, transcriptions and tapes of any description.

"Common ownership" means that an individual or individuals possess significant ownership or equity in the subcontractor and the entity providing the services under the contract.

"Contract for services" means a contract through which a provider obtains the performance of an act or acts, as distinguished from supplies or equipment. It includes any contract for both goods and services to the extent the value or cost of the service component is $10,000 or more within a 12-month period.

"Control" means that an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization.

"Provider" means a hospital, skilled nursing facility, home health agency, or comprehensive outpatient rehabilitation facility, or a related organization (as defined in § 405.427 of this chapter) of any of these providers.

"Related to the subcontractor" means that the subcontractor is, to a significant extent, associated or affiliated with, owns or is owned by, or has control of or is controlled by, the organization furnishing the services, facilities, or supplies.

"Subcontractor" means any entity, including an individual or individuals, that contracts with a provider to supply a service, either to the provider or directly to a beneficiary, for which Medicare reimburses the provider the cost of the service. This includes organizations related to the subcontractor that have a contract with the subcontractor for which the cost or value is $10,000 or more in a 12-month period.

§ 405.302 Requirement for access clause in contracts.

(a) *Applicability.* This subpart applies to contracts—

(1) Between a provider and a subcontractor and, where subject to Section 1861(v)(l)(I)(ii) of the Act, between a subcontractor and an organization related to the subcontractor;

(2) Entered into or renewed after December 5, 1980; and

(3) For services the cost or value of which is $10,000 or more over a 12-month period, including contracts for both goods and services in which the service component is worth $10,000 or more over a 12-month period.

(b) *Requirement.* Any contract meeting the conditions of paragraph (a) of this section must include a clause that allows the Comptroller General of the United States, HHS and their duly authorized representatives access to the subcontractor's contract, books, ducuments, and records until the expiration of four years after the services are furnished under the contract or subcontract. The access must be provided for in accordance with the provisions of this subpart. The clause must also allow similar access by HHS, the Comptroller General, and their duly authorized representatives to contracts subject to Section 1861(v)(l)(I)(ii) of the Act between a subcontractor and organizations related to the subcontractor and to books, documents, and records.

(c) *Prohibition against Medicare reimbursement.* If a contract subject to the requirements of this subpart does not contain the clause required by paragraph (b) of this section, HCFA wil not reimburse the provider for the cost of the services furnished under the contract and will recoup any payments previously made for services under the contract. Before denying reimbursement or recouping payment, HHS will—

(1) Request from the provider an explanation of the omission of the clause; and

(2) If HHS determines the provider had good cause for the omission, allow the provider 60 days to amend the contract to include the clause.

§ 420.303 HHS criteria for requesting books, documents, and records.

HHS will generally request books, documents, and records from a subcontractor only if one of the following situations exists and the question cannot satisfactorily and efficiently be resolved without access to the books, documents and records:

(a) HHS has reason to believe that the costs claimed for services of the subcontractor are excessive or inappropriate;

(b) There is insufficient information to judge the appropiateness of the costs;

(c) There is a written accusation with suitable evidence against the provider or subcontractor of kickbacks, bribes, rebates or other illegal activities; or

(d) There is evidence of a possible nondisclosure of the existance of a related organization.

§ 420.304 Procedures for obtaining access to books, documents, and records.

(a) *Contents of the request.* Requests for access will be in writing and contain the following elements:

(1) Reasonable identification of the books, documents, and records to which access is being requested;

(2) Identification of the contract or subcontract in which costs are being questioned as excessive or inappropriate;

(3) The reason that the appropriateness of the costs or value of the services of the subcontractor in question cannot be adequately or efficiently determined without access to the subcontractor's books and records;

(4) The authority in the statute and regulations for the access requested;

(5) To the extent possible, the identification of those individuals who will be visiting the subcontractor to obtain access to the books, documents and records;

(6) The time and date of the scheduled visit; and

(7) The name of the duly authorized representative of HHS to contact if there are any questions.

(b) *Subcontractor response to a request for access to books, documents, and records.*

(1) The subcontractor will have 30 days from the date of a written request for access to books, documents and records to make them available in accordance with the request.

(2) If the subcontractor believes the request is inadequate because it does not fully meet one or more of the required elements in paragraph (a) of this section, the subcontractor must advise the requesting organization of the additional information needed.

(i) The subcontractor must notify the requesting organization within 20 days of the date of the request that it was improperly completed.

(ii) The subcontractor must make the books, documents, and records available within 20 days after the date of the requesting organization's response.

(3) If the subcontractor believes, for good cause, that the requested books, documents and records cannot be made available as requested within the 30-day period under paragraph (b)(1) of this section, the subcontractor may request an extension of time within which to comply with the request from the requesting organization. The requesting organization may, at its discretion, grant the request for an extension, in whole or in part, for good cause shown.

(4) The subcontractor must make the books, documents, and records available during its regular business hours for inspection, audit and reproduction.

(5) If HHS asks the subcontractor to reproduce books, documents and records, HHS will pay the reasonable cost of reproduction. However, if the subcontractor reproduces books, documents and records as a means of making them available, the subcontractor must bear the cost of the reproduction and no Medicare reimbursement will be made for that purpose.

(6) HHS reserves the right to examine the originals of any requested contracts, books, documents and records, if they exist.

(c) *Refusal by subcontractor to furnish access to records.* If HCFA determines that the books, documents and records are necessary for the reimbursement determination and the subcontractor refuses to make them available, HHS may initiate legal action against the subcontractor.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance)

Dated: July 23, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 22, 1982.

[FR Doc. 82-27268 Filed 10-6-82; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22 and 90

[Gen. Docket No. 82-694; Rm-3685; FCC 82-429]

Use of the 40–50 MHz Band in Alaska for Meteor Burst Communications.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission is proposing to revise its Rules in response to a petition for rulemaking to provide for the use of meteor burst communications in the State of Alaska. Meteor burst communications results from the reflection of radio waves by ionized meteor streams and is currently used primarily for Government applications. The proposed changes would provide two frequencies each for common carrier and private radio station operations in the 40–50MHz band. The Rule Making should have a positive effect for users by providing a long range, fully automated operation particularly adaptable for remote, unattended applications.

DATES: Comments are due by November 30, 1982 and replies by December 30, 1982.

ADDRESS: Federal Communications Commission, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653-8167.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653-8167.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 22

Rural radio service.

47 CFR Part 90

Public safety radio services.

Adopted: September 24, 1982.

Released: October 1, 1982.

I. Introduction

In the matter of amendment of Parts 2, 22 and 90 of the FCC rules and regulations to provide for the use of meteor burst communications, Gen Docket No. 82-694 RM-3685.

1. The Commission has under consideration a petition in the above entitled matter filed by Meteor Data, Inc. (hereinafter "MDI"). The Petitioner requests that the Commission's rules be amended to allocate frequencies and establish rules and regulations for a new Meteor Burst Communications Service. The service would operate as a common carrier and MDI seeks the assignment of four frequencies in the 40–50 MHz band for its proposed operation.

2. Supportive comments were filed by Western Union and the State of Alaska, Division of Communications. The State of Alaska, while it favors Commission consideration of the proposed new common carrier service, additionally requests that provision be made for private land mobile usage under Part 90 for meteor burst technology. MDI also filed Reply Comments in the proceeding.

II. System Description

3. The effect of meteor ionization on radio propagation was discovered around 1940 and the ability to communicate via meteor ionization was recognized as early as 1951. Meteor burst communications uses the phenomenon of meteor trails, produced daily in the earth's atmosphere at heights of 80 to 120 km, to reflect radio waves in the VHF frequency range for distances up to 2000 km. The ionized meteor trails last only from a few

milliseconds to a few seconds, but communications is possible because billions of meteors are constantly entering the earth's atmosphere. Since the meteor trails are of such short duration, communications, is intermittent and data transmission at a very high rate or burst is necessary, and, thus, the technique is commonly referred to as Meteor Burst Communications.

4. A meteor burst system is composed of base (master) and fixed remote stations. A typical base station consists of several receivers, a transmitter, a linear amplifier, duplex filters and a "mini" computer for system control. Six antennas spaced 60 degrees apart can provide omnidirectional coverage to the base station. A remote station site can consist of a transmitter, a receiver, an antenna, and power supply. Since a remote site transmitter operates for only a fraction of a second during meteor trails, the average power is very low and the site may be powered by batteries or solar cells.

5. A typical operational sequence begins with the Master Station continually probing the sky for a suitable meteor trail. The probing signal contains digital information including a preamble, recognition code, and a remote station address code. The coded digital signal is received at the remote station when a meteor trail is properly oriented and suitably ionized to reflect the base station signal. The remote station is normally in a standby mode and its data gathered for transmission is held in buffer storage. When the probing signal is received, the remote station decodes it and if the digital address is incorrect such as when some other station in the system is being called, the remote station returns to the standby mode. However, if the address is correct, the remote station transmits a block of data to the base station over the same meteor trail. When the master station receives the signal from the remote station, the computer examines the premable coding and, if it is correct, the data is accepted. This process is automatically repeated using new meteor trails as long as data awaits transmission. It is reported that approximately 1000 remotes can be served by only one base station.

III. Why New Service Is Needed

6. According to MDI, early meteor burst systems were complex and costly. In the 1970's, with advances in solid state and computer technology meteor burst systems became more cost competitive and their unique communications capabilities have been developed for various applications for government agencies. For example, one system was developed for the Department of Agriculture to measure snow depths and was dubbed SNOTEL which is short for snopack telemetry. SNOTEL is operational in 11 Western States and serves as a data acquisition system with nearly 500 remote data terminals reporting to two master stations. However, with the exception of three experimental licenses granted to private users, all meteor burst systems are licensed and operated for Government use only.

7. Based on the successful demonstration of meteor burst communications for Government applications, spectrum allocation is requested by the petitioner to afford non-Government users the opportunity to utilize the new technology. The petitioner has indicated that the State of Alaska has expressed interest in the possible use of meteor burst communications for aviation weather data acquisition at 53 rural weather stations. Interest in meteor burst is particularly high since it is reported that not only is the cost for meteor burst less than other available methods, but the low power requirements with standby battery power would permit operation to continue regardless of frequent village power failures that occur in Alaska.[1] In addition, mineral exploration companies have also expressed interest in the use of meteor burst systems to provide data communications from remote mobile exploration camps to the home office. One other suggested use involves avalanche prediction instrumentation operating from remote mountain top locations during severe weather conditions. Also, mentioned is the need to monitor conditions at remote facilities relative to the functioning of electrical, sewer and heating systems.

8. Thus, MDI indicates that meteor burst communications has the capability of widespread use in non-government applications particularly those that require the transmission of relatively short messages. In addition, it states that the reliability, transportability and deployability of meteor burst systems can satisfy communication needs where satellite usage is too elaborate and where microwave and VHF links are too expensive. Furthermore, due to propagation phenomena, meteor burst communication provides 24 hour availability for transmission and is not susceptible to the diurnal, seasonal and long term variations of the ionosphere which frequently degrade other means of HF communications.

IV. Proposed Frequency Requirements and Technical Standards

9. MDI proposes to operate its new Meteor Burst Communications Service as a common carrier and provide a service to subscribers. For this purpose, MDI requests the allocation of four frequencies in the 40–50 MHz for the proposed new service. Based on information available from Government meteor burst operations, frequencies in the 40–50 MHz band are ideally suited for meteor burst communications. MDI also requests that the frequencies be selected with a uniform separation of 1.7 to 1.9 MHz to accommodate equipment design and to prevent intermodulation to local AM broadcast signals from the base station operations. In addition, MDI states that a type of geographic protection would be required within a radius of approximately 150 miles of the base station since it operates continuously. Local use by other land mobile users of the base station receive frequency would interfere with the reception of the low level signals from remote units. Limited shared operation beyond VHF line-of-site may be permissible although heavy traffic on the remote receive frequency would block the remote from receiving the base station probing signal. Shared operation on the remote transmit frequency beyond the base station zone would be feasible since the short burst nature of the remote transmitter signal should preclude interference to conventional 2-way voice communications. The four frequencies requested (two duplex pairs) could serve two separate Meteor Burst Systems operating in the same area. Four specific frequencies, 42.40, 44.10, 45.80 and 47.50 MHz were suggested for use by MDI on the basis that in Alaska there appeared to be no existing operation on those frequencies.

10. The State of Alaska in its comments in the proceeding recommended that any new rules involving meteor burst communications should also permit its use by privately licensed users such as state entities as well as common carriers. Such operation it suggests could be provided for under either Part 90 or 94 of the rules. While the State of Alaska does not offer specific recommendations for frequency usage, it does correctly point out that the frequency 47.50 MHz is already authorized in the Anchorage area and probably would not be a good choice. It also suggests that if non-Government frequencies are not available for allocation, that perhaps the

[1] Report prepared by Alaska Science and Technology for Alaska Department of Transportation. ALASKA STATE AVIATION WEATHER STATION PROGRAM—ANALYSIS AND DESIGN (Contract No. 21–81, Dec. 1980).

Interdepartment Radio Advisory Committee could be queried to see if any Government frequencies in the 40–50 MHz band could be shared by meteor burst systems. The State of Alaska also comments that it wishes to be eligible for a privately-operated meteor burst system, if available. It questions, however, whether enough information is available to indicate if meteor burst systems could generate harmful interference to licensed land mobile and teleprinter operations. In this regard, it points out that since the meteor burst base station would occupy a channel continuously, it could not be shared with land mobile stations. It also states that many low power TV translators operate in Alaska and the potential for interference from meteor burst system needs consideration.[2]

11. With regard to Technical Standards for the proposed meteor burst service, MDI proposes possible specifications for transmitter power, emission and bandwidth. For transmitter output power, MDI proposes a maximum of 1000 watts for base stations and 500 watts for remote stations. The emission proposed would be F9Y and would provide for the use of Phase Shift Keying (PSK) or Frequency Shift Keying (FSK). The bandwidth proposed is 20 kHz. MDI suggests that these technical standards are consistant with those employed in operating meteor burst systems.

VI. Discussion

12. The Commission views with great interest the public service potential available from the developing meteor burst technology. While ionized meteor trails required for transmission last only a few seconds or less, a typical system operating at 4800 bits per second can provide a throughput over a 24 hour period equivalent to 100 words per minute. While this may be a low average data transmission rate, the applications for short message communications purposes appear ideally suited for certain special uses particularly in view of the operating range achievable, the number of remotes that can serve a single base station, and the low power supply requirements for remote station facilities. Also, the Commission is encouraged by the potential contribution meteor burst communications can offer to improving individual safety in that the systems can function from remote and even hazardous locations without the need for a human operator. While HF and satellite communications are useful for some remote monitoring type functions, the reported compactness and simple antenna requirements of meteor burst systems could, provide an alternative choice to fulfill the diverse public monitoring requirements described above. Further, as an alternative system, meteor burst communications could be used by licensees with slow data transmission requirements and thereby alleviate the demand and congestion on other frequencies thereby contributing to greater spectrum efficiency.

13. Based on the Comments of MDI and the State of Alaska, the Commission is presented with the choice of proposing that meteor burst systems be authorized under a common carrier system, a private land mobile arrangement or possibly both. The authorization of a meteor burst system as a common carrier as proposed by MDI should allow more users to share operation on a pair of frequencies. In addition, a common carrier could provide a service to many users whose requirements are for only a few units and whose needs do not justify the investment and maintenance necessary for a privately owned system. On the other hand, a large entity such as a state government with its many departments requiring service, may need several hundred units and be in the position to justify the investment required for a privately operated system. Because of its size and the number of units to be authorized, such an entity could accommodate all of its needs on a pair of frequencies much like a common carrier system could do, while occupying only a small amount of spectrum. Because the 40–50 MHz band is primarily allocated for land mobile use, private systems could be accommodated under the present rules by applicant waiver requests. On the other hand, if the Commission specifically allocates meteor frequencies for private systems it could provide an immediate availability for burst operations while helping to minimize the number of applications requiring action on a waiver basis. In view of the absence of complete information on applicant demands for private system usage, it would appear reasonable to allocate a minimum number of frequencies for private usage and if the demand is greater than anticipated, additional frequencies could be requested by rule waiver. Accordingly, the Commission is proposing to allocate frequencies for both common carrier and private usage for the operation of meteor burst systems.

14. MDI proposes that meteor burst communications be authorized under a new class of common carrier station operating under Part 22 of the rules. While the Commission supports the application of meteor burst technology for common carrier stations, it is not convinced that establishing a new service is necessary to accommodate the new technology. The Commission would favor meteor burst operations to be conducted under an existing service if possible to utilize and conserve existing resources. In this regard operation under an existing service would obviate the need for extensive new rules and application forms to accommodate a new service. An appropriate service appears to be the Rural Radio Service which is designed to provide for public communications between a central office and subscriber located in rural areas in which it is impracticable to extend service via landlines. To make station terminology consistant with that used in the Rural Radio Service, a base station would correspond to a central office station and a remote unit to the subscriber stations. Accordingly, the Commission proposes to allow meteor burst communications to be authorized under the provisions of the Rural Radio Service under Part 22 of the rules for common carrier applications.

15. The 42–46.6 MHz and 47–49.6 MHz segments of the 40–50 MHz band are allocated for Land Mobile usage and on the basis of frequency occupancy data, the frequencies appear to be capable of accommodating an allocation for meteor burst system operating in the fixed service in Alaska. The remaining segments between 40–50 MHz are allocated for Government stations and are not available for meteor burst assignment as the State of Alaska has suggested. Because the number of frequencies available for a primary, dedicated reallocation for meteor burst usage is limited and since, as mentioned earlier, the demand for use of this new technoglogy is uncertain, the Commission proposes to provide a total of four frequencies for meteor burst systems. Two of the four frequencies would be set aside for common carrier systems and the remaining two frequencies for private systems. This amount of spectrum allocation would require a sharing of the allocated frequencies by all meteor burst systems users in Alaska and some type of cooperative arrangement would probably be necessary to accommodate all users. In addition, equipment design techniques such as an address coding system and error correction method could be employed to permit multiple

[2] The State of Alaska is mainly concerned with the possibility of the meteor burst signal being directly received in the passband of the intermediate frequency amplifier of TV receivers. This passband is typically centered around 44 MHz.

users to compatibly share the same frequencies. Comments are invited to address frequency sharing among meteor burst systems and particularly what methods would be utilized to accomplish compatible usage of the limited frequencies proposed. Although we perceive difficulties in implementing sharing between co-channel common carrier and private licensees, we are soliciting comments on the feasibility and implementation of that sharing approach as well.

16. MDI in its petition proposed the assisgnment of two base and two mobile frequencies or a total of four frequencies for common carrier usage. The Commission, however, is proposing that a total of four frequencies be allocated on a primary basis for meteor burst communications-two for common carrier and two for private use. The frequencies 42.40 MHz and 44.10 MHz are being proposed for common carrier usage since they are two of the four frequencies requested by MDI for allocation and are presently unoccupied and available for assignment in Alaska at this time. The frequencies have a uniform separation of 1.7 MHz to accommodate hardware design and the lower frequency would be assigned for central office station (base) operation and the higher frequency for subscriber (remote) stations. For private radio systems, the frequencies 44.20 MHz and 45.90 MHz are being proposed since they, likewise, are presently unoccupied in Alaska at this time. Here again we are proposing to allocate the frequencies for use as a base-remote pair with the lower frequency for base operation and the higher frequency for remote station usage. If this frequency becomes occupied by licensed users before this rulemaking is terminated, other frequency pairs may be substituted accordingly.

17. With regard to technical standards for the proposed Part 22 and Part 90 operations, the Commission agrees that those suggested by the MDI appear to be acceptable and would be reflected in the proposed rules for each part. Also, while the operating cycle of meteor burst stations is so brief that no interference to other users is expected, any comments or information regarding protection standards will be carefully evaluated to see if some standard should be adopted. At present, we are unaware of any reported cases of interference in Alaska from government operated meteor burst system. However, to protect against the possibility of television interference, the Commission is considering the implementation of a developmental grant policy. The terms of the developmental grant could be for one year, and the grant would be subject to cancellation without hearing by the Commission upon notice to the licensee of television interference problems. Developmental grant would be subject to cancellation without hearing by the Commission upon notice to the licensee of television interference problems. Developmental reports may be required as could surveys of the TV viewing public within a few miles of the transmitting stations to asscertain whether TV viewing is being impaired by the operation of the stations. In addition, licensees may be required to work closely with FCC field personnel in investigating and solving interference problems which may occur. Comments are specifically invited with regard to the regulation and technical standards proposed and, in particular any comments or information relative to the known affects of meteor burst communications on interference to TV reception and other land mobile operations, and the implementation of a development grant policy are welcome. Meteor burst systems shall also be subject to existing applicable rules for the Rural Radio Service and the Private Land Mobile Radio Services to ensure compatible operation with other stations licensed in accordance with the allocation table. Further, the usual coordination procedures with Canada during licensing shall be employed when geographical considerations so require.

VII. Proposals

18. Accordingly, it is proposed to amend Parts 2, 22 and 90 of the Commission's Rules to permit the use of Meteor Burst Communications Systems. Specifically it is proposed that:

A. Common carriers stations in the Rural Radio Service be permitted to use meteor burst communications under the provisions of Part 22 of the Commission's Rules. The frequencies 42.4 MHz and 44.1 MHz are proposed to be allocated as the central office station and subscriber station frequencies, respectively. Availability would be limited to operation in Alaska and authorized stations would operate in accordance with the provisions and technical standards proposed in the APPENDIX.

B. Stations in the Private Land Mobile Radio Services be permitted to use meteor burst communications only in the State of Alaska under the provisions of Part 90 of the Commission's rules. The frequencies 44.20 MHz and 45.90 MHz are proposed to be authorized for use as the base and remote station frequencies, respectively. Availability would be limited to operation in Alaska and authorized stations would operate in accordance with the provisions and technical standards proposed in the APPEDIX.

C. The Table of Frequency Allocation in § 2.106 of the Rules would be modified to add NG 141 to column 7 for the frequencies between 42–46.6 MHz. The new footnote would read:

NG 141 The frequencies 42.40 MHz and 44.10 MHz may be authorized in the fixed service in Alaska for meteor burst communications by common carrier stations in the Rural Radio Service operating under the provisions of Part 22 of this chapter. The frequencies 44.20 MHz and 45.90 MHz may be authorized in the fixed service in Alaska for meteor burst communications by private land mobile stations operating uncer the provisions of Part 90 of this Chapter.

D. Section 2.1 would be modified to add the definition for meteor burst communications as follows:

Meteor Burst Communications—Communications by the propagation of radio signals reflected off ionized meteor trails.

VIII. Procedural Matters

19. For, further information concerning procedures to follow with respect to this rulemaking proceeding, contact Sam Tropea (202) 653–8167.

20. The proposed amendments to Parts 2, 22 and 90 of the rules as set forth in the APPENDIX, are issued pursuant to the authority contained in Sections 4(i) and 303 (c), (g), (h) and (r) of the Communications Act of 1934, as amended.

21. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before November 30, 1982, and reply comments on or before December 30, 1982. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

22. For purposes of ths non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of

the mater is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

23. Because the enhanced spectrum use proposed herein is on a non-interference basis, it should have no impact on primary users. The opportunity to take advantage of the benefits of the 42–46.6 MHz band will be open to all present and potential users, large and small and it is expected that the additional spectrum sharing will provide increased frequency usage and spectrum efficiency. Therefore, we can think of no way the proposed action will affect the users of the devices in question except to create the opportunity for additional frequency usage. Accordingly the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act do not apply to this proceeding. See Title 5 U.S.C. Section 605(b). It is ordered, that a copy of this Notice shall be sent to the Chief Counsel of Advocacy of the Small Business Administration.

24. In accordance with the provisions of § 1.419 of the Commission's Rules, an original and 5 copies of all statements, briefs or comments filed shall be furnished to the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2, 22, and 90 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2 [AMENDED]

A. Part 2—Frequency Allocation and Radio Treaty Matters, General Rules and Regulations.

1. A new definition for meteor burst communications is added in alphabetical order to § 2.1 to read as follows:

§ 2.1 Definitions.

* * * * *

Meteor burst communications. Communications by the propagation of radio signal reflected off ionized meteor trails.

* * * * *

2. In § 2.106 of the allocation table for the frequencies between 42–46.6 MHz, column 7 is amended by adding the footnote designator (NG 141); and under the heading NG Footnotes, a new Footnote NG 141 is added as follows:

§ 2.106 Table of frequency allocations.

FEDERAL COMMUNICATIONS COMMISSION

7	8	9	10	11
Band (MHz)	Service	Class of station	Frequency (MHz)	Nature of services of stations
*	*	*	*	*
42–42.95 (NG–141)...	LAND MOBILE	Base. Land mobile		PUBLIC SAFETY
*	*	*	*	*
43.69–44.61 (NG–141).	LAND MOBILE	Base. Land mobile		LAND TRANSPORTATION.
44.61–46.6 (NG–141).	LAND MOBILE	Base. Land mobile		PUBLIC SAFETY.
*	*	*	*	*

NG Footnotes

* * * * *

NG 141 The frequencies 42.40 MHz and 44.10 MHz may be authorized in the fixed service in Alaska for meteor burst communications by common carrier stations in the Rural Radio Service operating under the provisions of Part 22 of this chapter. The frequencies 44.20 MHz and 45.90 MHz may be authorized in the fixed service in Alaska for meteor burst communications by private land mobile stations operating under the provisions of Part 90 of this Chapter.

PART 22 [AMENDED]

B. Part 22—Public Mobile Radio Services.

1. In § 22.2, a new definition for meteor burst communications is added in alphabetical order as follows:

§ 22.2 Definitions.

* * * * *

Meteor burst communications. Communications by the propagation of radio signals reflected off ionized meteor trails.

* * * * *

2. In § 22.107, paragraph (b) is amended by adding footnote 3 to the frequency range 30 to 50 MHz as follows:

§ 22.107 Transmitter power.

* * * * *

(b) * * *

Frequency range (MHz)	Rated power output (watts)
* * * * *	
30 to 50	[3]350
* * * * *	

[3] On the frequencies 42.40 MHz and 44.10 MHz in Alaska; the maximum rated power output is 1000 watts for central office stations and 500 watts for subscriber stations employing meteor burst communications in the Rural Radio Service.

* * * * *

3. Section 22.601 is amended by adding a new paragraph (g) as follows:

§ 22.601 Frequencies.

* * * * *

(g) In the State of Alaska, the frequencies 42.40 MHz and 44.10 MHz are available for assignment to fixed stations in the Rural Radio Service subject to the following conditions:

(1) The frequency 42.40 MHz shall be used for central office station operations and 44.10 MHz for subscriber station

operations. The frequencies are available to all users on a shared basis and users shall cooperate among themselves to promote compatible operation.

(2) The maximum transmitter output power shall not exceed 1000 watts for central office stations and 500 watts for subscriber stations.

(3) The authorized emission designator to be used is F9Y to allow for Phase Shift Keying (PSK) or Frequency Shift Keying (FSK).

(4) The authorized bandwidth is 20 kHz (20 F9Y).

(5) Stations employing meteor burst communications shall not cause harmful interference to other stations operating in accordance with the allocation table.

4. Section 22.603 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and by adding a new paragraph (d) as follows:

§ 22.603 Types of emission.

* * * * *

(d) Stations in this service operating on the frequencies 42.40 MHz and 44.10 MHz in Alaska are authorized to use F9Y emission for meteor burst communications.

* * * * *

PART 90 [AMENDED]

C. Part 90—Private Land Mobile Radio Services.

1. In Section 90.7, a new definition is added in alphabetical order as follows:

§ 90.7 Definitions.

* * * * *

Meteor burst communications. Communications by the propagation of radio signals reflected off ionized meteor trails.

* * * * *

2. In Section 90.19, paragraph (d) and (e) are amended to add new limitations 26 and 27 to the Frequency Table for the frequencies 42.40 MHz and 45.90 MHz as follows:

§ 90.19 Police radio service

* * * * *

(d) * * *.

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of Station(s)	Limitations
* * * * *		
42.40	do	2, 3, 12, 27
* * * * *		
45.90	do	28
* * * * *		

* * * * *

(e) * * *.

(27) In the State of Alaska only, the frequency 42.40 MHz is reserved for assignment in the fixed service to stations in the Common Carrier Rural Radio Service utilizing meteor burst communications. Usage shall be in accordance with Part 22 of this Chapter and stations utilizing meteor burst communications shall not cause harmful interference to other stations operating in accordance with the table.

(28) In the State of Alaska only, the frequency 45.90 MHz is available for assignment in the fixed service to private land mobile radio stations utilizing meteor burst communications. Use of this frequency by stations employing meteor burst systems will have priority over other land mobile users. Usage shall be in accordance with Section 90.250 of this Part.

3. In § 90.89, paragraphs (b) and (c) are amended to add new limitations 17 and 18 to the Frequency Table for the frequencies 44.10 MHz and 44.20 MHz as follows:

§ 90.89 Motor carrier radio service.

* * * * *

(b) * * *.

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of Station(s)	Limitations
* * * * *		
44.10	* * *	5, 18
* * * * *		
44.20	* * *	5, 19
* * * * *		

* * * * *

(c) * * *.

(18) In the State of Alaska only, the frequency 44.10 MHz is reserved for assignment in the fixed service to stations in the Common Carrier Rural Radio Service utilizing meteor burst communications. Usage shall be in accordance with Part 22 of this Chapter and stations utilizing meteor burst communications shall not cause harmful interference to other stations operating in accordance with the table.

(19) In the State of Alaska only, the frequency 44.20 MHz is available for assignment in the fixed service to private land mobile radio stations utilizing meteor burst communications. Use of this frequency by stations employing meteor burst systems will have priority over other land mobile users. Usage shall be in accordance with Section 90.250 of this Part.

4. Subpart J is amended by adding a new § 90.250 entitled "Meteor Burst Communications" as follows:

§ 90.250 Meteor burst communications.

Meteor burst communications may be authorized for the use of private land mobile service stations subject to the following provisions:

(a) Station operation is limited to the State of Alaska only.

(b) The frequency 44.20 MHz shall be used for base station operation and 45.90 MHz for remote station operation.

(c) The maximum transmitter output power shall not exceed 1,000 watts for base stations and 500 watts for remote stations.

(d) The authorized emission designator to be used is F9Y to allow for Phase Shift Keying (PSK) or Frequency Shift Keying (FSK).

(e) The maximum authorized bandwidth is 20 kHz (20 F9Y).

(f) Use of the available frequencies by stations employing meteor burst communications is shared with and on a primary basis to other land mobile users.

(g) Station identification in accordance with § 90.425 (a) or (b) shall only be required for the base station.

5. In § 90.555(b), the combined frequency list table is amended for the frequencies 42.40 MHz, 44.10 MHz, 44.20 MHz, and 45.90 MHz to indicate meteor burst usage in Alaska as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b)* * *.

Frequency	Services	Special limitations
*	*	* * *
42.40	* * *	State police, meteor burst in Alaska for part 22 users.
42.42	* * *	State police.
42.44	* * *	Do.
*	*	* * *
44.10	* * *	For operation between urban areas. Meteor burst in Alaska for part 22 users.
44.12	* * *	For operation between urban areas.
44.14	* * *	Do.
*	*	* * *
44.20	* * *	For operation between urban areas. Meteor burst in Alaska for part 90 users.
44.24	* * *	For operation between urban areas.
44.26	* * *	Do.
*	*	* * *
45.90	* * *	Intersystem operation. Meteor burst in Alaska for part 90 users.
45.92	* * *	Intersystem operation.
45.94	* * *	Do.
*	*	* * *

[FR Doc. 82-27954 Filed 10-8-82 8:45am]
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47 CFR Part 31

[CC Docket No. 82-680; RM-4076; FCC 82-425]

Amendment of Annual Report Form M

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is considering amending the annual report for telephone carriers to revise reporting requirements. This Notice is the result of a petition filed by American Telephone and Telegraph Company on March 15, 1982. Public Notice on the petition was given on March 24, 1982. This action will reduce the level of reporting requirement placed upon the subject carrier.

DATES: Coments are due on or before November 8, 1982. Reply comments are due on or before November 23, 1982.

ADDRESS: Submit comments to Federal Communications Commission, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Accounting and Audits Division, (202) 634-1861.

SUPPLEMENTARY INFORMATION: List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

Adopted: September 23, 1982.

Released: October 1, 1982

I. Introduction

In the matter of an amendment of annual report form M CC Docket No. 82-680 (RM 4076), proposed rulemaking.

1. Notice is hereby given of a proposed rulemaking to revise Annual Report Form M (Form M). This proposal is the result of a petition filed by American Telephone and Telegraph Company (AT&T), for itself and on behalf of the associated Bell System operating companies, to revise certain schedules of Form M. AT&T believes that changes in the telephone industry, the level of inflation and related events have rendered certain reporting requirements burdensome or impractical and requires submission of some insignificant data.

2. Form M is an annual report required to be filed by telephone carriers having annual operating revenues in excess of $1 million. This report is filed in accordance with S 43.21 of Part 43 and 1.785 of Part I of the Rules and provides information on the stock and stockholders; officers and directors; funded debt; property, franchises, and equipment; employees and their salaries; and financial operations of the reporting companies.

3. In response to AT&T's petition, the Commission issued a Public Notice on March 24, 1982, giving interested parties thirty days to file statements opposing or supporting the petition for rulemaking. Comments were received from GTE telephone companies (GTE) and MCI Telecommunications Corporation (MCI), and reply comments were received from AT&T. Moreover, much of the reporting relief sought by the petition has been granted on an interim basis by a waiver adopted January 26, 1982,[1] for the 1981 report.

4. GTE is in agreement with the Bell System's petition and suggested that this Commission should initiate a rulemaking procedure to eliminate unnecessary reporting required by the Form M. MCI also agreed with amending the Form M; however, it suggested that any changes be subject to further clarification of the proposed modified consent decree. MCI suggested that this Commission should consider a more detailed breakdown of revenues, expenses, and investment areas and specified two areas where it believes the AT&T proposal should be modified.

5. We are issuing this notice for the purpose of addressing those problems pointed out in AT&T's petition. We believe it appropriate that these problems be addressed at this time. However, a more comprehensive review of Annual Report Form M will be made in Docket No. 78-196, in which a new Uniform System of Accounts is being developed, to assure that the information collected continues to be needed for regulatory purposes does not duplicate information available from other governmental sources and is obtained with the least possible burden on the carriers.[2]

II. Discussion

6. In this Notice we are proposing to amend the schedules which AT&T has urged are in need of revision. Below, we have set forth the present requirements of the schedules, AT&T's proposal, and our proposed changes to the affected schedules.

Schedule 34, Operating Revenues (Account 300)

7. Schedule 34, Operating Revenues, requires the reporting of certain operating revenues by local service, toll and miscellaneous revenues and the reporting of uncollectable operating revenues. AT&T stated that this schedule should be revised to make the revenue categories more identifiable with modern tariff structure and subaccounts, and to reflect the fact that some of the services represented by the revenue categories are not presently offered or are offered to only a limited extent. AT&T recommends that all operating revenues should continue to be reported in total by main accounts, as outlined in Part 31 of the Rules. It further states that subaccounts of revenue categories of account 504, "Local private line services," and account 512, "toll private line services," should be revised to reflect combinations of current standard subaccounts which would delete services either no longer offered by AT&T and the Bell System operating companies, or services offered to such a limited extent as not to justify a separate category. We believe that AT&T's format for Schedule 34 provides sufficient data to permit the Commission to analyze operating revenues and, therefore, propose that Form M be revised accordingly. (See Attachment A).

Schedule 39, Expenses Attributable to Formal Regulatory Cases

8. Instruction 1 of this schedule requires reporting expenses totaling $500 or more which are attributable to formal regulatory cases before Federal, State, and other regulatory commissions and to court cases in which a commission is a party. AT&T proposes to amend this instruction to require the reporting of only those expenditures which aggregate over $10,000 for any particular case since the $500 limit was set 25 years ago. The AT&T analysis provided in their petition indicates for 1980 that 53% of the cases fell within the $500-10,000 range but represented only 3% of the total dollars reported. MCI states that AT&T's proposal for a $10,000 minimum is "overly generous" and proposes that a $5,000 minimum would be more appropriate. MCI states that the ability to segregate different portions of the same matter into different cases so as to avoid reporting would be much easier to do with a $10,000 minimum than with a $5,000 minimum. We are not pursuaded by MCI's contention that $5,000 limit would be more appropriate than the $10,000

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[1] *Waiver of Certain Reporting Requirements of Annual Report Form M*, Mimeo No. 1830, released January 27, 1982.

[2] *Second Supplemental Notice of Proposed Rulemaking and Order*, Docket No. 78-196, 88 F.C.C. 2d 83 (1981).

limit recommended in the petition. MCI has not demonstrated how the $5,000 limit would make it more difficult to avoid reporting if a company were inclined to do so by segregating a matter into different cases. Moreover, since currently reportable amounts under $10,000 represent only 3% of the total, we see little or no advantage to the $5,000 limit. It is within the Commission's discretion to propose a limit which will provide the information it needs while weighing the costs to the reporting carriers. The Commission tentatively believes that the advantage in the reduction of carriers' reporting requirements outweighs the possible benefits of additional data which would be reported at the $5,000 limit. Accordingly, we propose that the $500 limit be raised to $10,000 for reporting expenses attributable to regulatory cases.

Schedule 43, Donations or Payments For Services Rendered By Persons Other Than Employees.

9. Instruction 1 of this schedule requires the reporting of $10,000 or more made to each recipient (not an employee) for certain services rendered, or made as donations. AT&T states that in the year 1980, the listings ranged from 1 to 28 pages and involved from 1 to 1,600 people. AT&T proposes that the limit be raised to $25,000 in view of inflation and the increased reporting burden placed on the telephone companies since this $10,000 limit was set 9 years ago. AT&T states that raising the limit from $10,000 to $25,000 could simplify the preparation of this schedule for the Bell System Companies. By using the $25,000 limit with 1980 data, AT&T states that the reporting requirement would have been reduced to 1 to 19 pages and 1 to 774 payees. MCI believes that raising the limit to $25,000 would render the schedule virtually useless. MCI feels that the current $10,000 limit is appropriate but a $15,000 limit might be warranted if meaningful information is provided at that level. It is the Commission's responsibility in setting limits to assess the regulatory information requirements against the cost of providing this information. In that regard, MCI has presented no basis to support its position that the $10,000 limit or $15,000 limit is more beneficial. It is our tentative view that the $25,000 limit is appropriate. In view of the length of time that the limit has been in effect and the potential reporting burdens it may require, we propose that the Form M be revised to use a $25,000 limit for reporting payments for certain services rendered by persons other than employees.

Schedule 60C, Analysis of Pension and Benefit Funds; and Schedule 60D, Investment of Pension and Benefit Funds

10. Schedule 60C provides an analysis of pension and benefit funds by requiring the reporting of increases and decreases made to the fund over the year. Schedule 60D requires the reporting of the description of pension and benefit fund investments to include the face amount, cost, book value, estimated market value and yield. AT&T proposes to delete both schedules since the data for each individual company is no longer available. AT&T explains that the individual company plans (except those of Southern New England Telephone Company (SNET) and Cincinnati Bell Inc. (CBI)) have been consolidated into two systemwide plans, one for management and one for non-management. It is our understanding that the Employee Retirement Income Security Act of 1974 (ERISA) requires all carriers to file information relating to their employee benefit plans with the Internal Revenue Service on Annual Report/Return—Form 5500. Therefore, since this information is already compiled annually for the IRS, we propose to delete Schedules 60C and 60D for all telephone carriers.

Schedule 70B, Compensation of Officers, Directors, Etc.

11. Instruction 1(b) of this schedule requires the reporting of aggregate salaries of $40,000 and above for all employees (other than officers and directors) for companies with operating revenues in excess of $100,000,000. Companies with operating revenues less than $100,000,000 are required to report aggregate salaries of $20,000 and above. These salaries are aggregated in $10,000 compensation groupings. AT&T proposes to amend instruction 1(b) so as to raise the minimum reportable annual salary for each individual to $75,500 and to report the aggregate of such amounts within compensation groups ranging from $75,500 to $125,500 and over. AT&T states that the minimum reportable salary has not been changed since 1973 and that the Consumer Price Index has since risen 111.5 percent with a similar increase in salary scales. We tentatively agree with AT&T's request to increase the salary limit and the compensation groupings. Accordingly, we propose that the requirements of Schedule 70B, instruction 1(b), be revised to raise the minimum individual salary rate to $75,500, for all carriers that file Form M, to permit them to report the aggregate of such amounts within compensation groups of "$75,500 to $85,499," "$85,500 to $95,499," "$95,500 to $105,499," "$105,500 to $115,499," "$115,500 to $125,499" and "$125,500 and over." The Commission is also considering the elimination of Schedule 70B and would appreciate comments on whether this schedule should be eliminated as an alternative to the changes discussed above.

Schedule 70C, Wages and Hours

12. Schedule 70C reports numbers of employees in classifications according to hourly rates of pay. In order to take account of continuing inflation and to keep this schedule current with today's economy, AT&T proposes that the range of Hourly Rate of Pay categories be increased. AT&T proposes to increase the range of Hourly Rate of Pay from the present "less than $3.50 to $11.50 and over" to "less than $5.50 to $19.00 and over." AT&T would report the 18 wage categories with $.50 intervals from "$5.50–$5.99" to "$7.50–$7.99", and $1.00 intervals from "$8.00–$8.99" to "$18.00–$18.99" AT&T states that this revision would afford the Commission a more meaningful breakdown of employees by wage categories in light of today's higher wage rates. The information contained in this schedule, though useful to this Commission in the past, is collected primarily for the use of the Bureau of Labor and Statistics. We, therefore, propose that this Commission eliminate the requirement to file this schedule.

Schedule 12C, Analysis of Entries in Property Held for Future Telephone Use (Account 100.3)

13. The instructions for Schedule 12C require listing separately each entry, amounting to $10,000 or more, in account 100.3, "Property held for future telephone use." AT&T proposes that this minimum be raised to $50,000 in order to simplify preparation of the schedule and reduce reporting burdens placed on the companies. AT&T indicates that their Form M filing for 1980, in which the $10,000 minimum was applicable, the total number of items requiring separate reporting was approximately 459, and, among the reporting companies, ranges from 1 to 81. Had a $50,000 minimum been applicale for 1980, AT&T states that the total reporting burden would have been reduced to approximately 193 items and the number of items reported by the companies would have been reduced to the range of 0 to 37. AT&T states that this reduction in reporting would exclude only 10% of the total dollars reported while reducing 57% of the entries separately reported in the schedule. We tentatively agree with

AT&T that the $50,000 minimum is more in keeping with today's higher prices for properties normally reported in this schedule and an increase in the current minimum reporting requirement could reduce the companies' burden in reporting data without a significant effect on the dollars reported. We, therefore, propose that Schedule 12C be revised to increase the minimum reporting requirement to $50,000.

Schedule 13A, Analysis of Telephone Plant Acquired (Account 276)

14. Instruction 1 of Schedule 13A requires reporting separately the amount of each acquisition of telephone plant included in account 276 at any time during the year, except minor acquisitions which had a purchase price each of less than $5,000. AT&T proposes that this minimum amount be raised to $50,000 to reflect the effects of inflation, to simplify preparation of the schedule and to ease reporting burdens borne by the companies. In the Form M filings by Bell System Companies for 1980, in which the $5,000 minimum was applicable, AT&T points out that the total number of items requiring separate reporting was approximately 195, and, among the companies, ranged from 0 to 58. AT&T provides information which indicates that 46% of the entries for the Bell System companies reported in Schedule 13A for 1980 were in the range below $50,000, but represented only 5% of the total dollars reported. AT&T specified that had a $50,000 minimum been applicable for 1980, the total reporting burden would have been reduced to approximately 106 items, and the number of items reported by the companies would have been reduced to the range of 0 to 31. We tentatively agree with AT&T that changing the limit to $50,000 would reduce the companies' reporting burdens without significant effect on the amount of dollars reported. We, therefore, propose that Schedule 13A be revised to increase the reporting limit to $50,000.

Schedule 16, Miscellaneous Physical Property (Accounts 103 and 315)

15. Instruction 1 of this schedule requires the separate reporting of data with respect to miscellaneous physical property at each location representing a book cost of $10,000 or more. AT&T states that the $10,000 figure has been a reporting requirement for Class A telephone companies since 1951, and for Class B telephone companies since 1966. AT&T proposes that the minimum amount for separate reporting be raised to $50,000 in view of continuing inflation, to simplify preparation of the schedule and to reduce reporting burdens placed on the companies. AT&T states that from 1951 to 1981, the Bell System Telephone Plant Index rose approximately 108% and the Consumer Price Index rose 261.8%. In the Form M filings by Bell System companies for 1980, in which the $10,000 minimum was applicable, the total number of items requiring separate reporting was approximately 1123, and, among the companies, ranged from 1 to 112. Had a $50,000 minimum been applicable for 1980, the total reporting burden would have been reduced to approximately 442 items, and the number of items reported by the companies would have been reduced to the range of 0 to 66.

16. AT&T provides information which indicated that 61% of the entries for the Bell System Companies reported in Schedule 16 for 1980 were in the range below $50,000, but represented only 11% of the total dollars reported. We believe that changing the limit to $50,000 would reduce the companies reporting burdens without significant effect on the amount of dollars reported. We, therefore, propose that Schedule 16 be revised to increase the reporting limit to $50,000.

II. Conclusion

17. It is proposed that any amendment made as a result of this proceeding will be effective in the annual report Forms M for the reporting year 1982.

18. If the foregoing proposals are adopted, the Tables of Contents and the Indices for Form M will be amended accordingly.

19. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that these reporting changes can be readily implemented by all carriers filing annual report Forms M without significant economic impact, and, in fact, will ease the reporting requirements of these carriers, both large and small. The rationale for the proposed changes is outlined in the above discussion.

20. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contracts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forth coming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of the presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

21. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

22. Accordingly, it is ordered, That pursuant to the provisions of Section 4(i) and 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219 and 220, there is hereby instituted a notice of proposed rulemaking into the foregoing matter.

23. It is further ordered, That all interested persons MAY FILE comments on the specific proposals discussed in the Notice on or before November 8, 1982. Reply comments shall be filed on or before November 23, 1982. In accordance with the provisions of § 1.419 of the Commission's Rules and

Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, D.C.

24. It is further ordered, That the Secretary shall cause this Notice of Proposed Rulemaking to be published in the **Federal Register.**

25. It is further ordered, pursuant to Section 220(i) of the Communications Act, 47 U.S.C. 220(i), That the Secretary shall cause a copy of this Notice to be served on each state commission.

Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

BILLING CODE 6712-01-M

Attachment A

34. OPERATING REVENUES (Account 300)

Line No.		Particulars (a)	Amount for The Year (b)	Increase Over Preceding Year (c)	Interstate and Foreign Revenues Included in Col. (b) (d)
		LOCAL SERVICE REVENUES	$	$	$
1	500	Subscribers' station revenues			
2	501	Public telephone revenues			
3	503	Service stations			
	504	Local private line services:			
4		Voice Grade Services – Other Than Data			
5		Less Than Voice Grade Services			
6		Data Services			
7		Program transmission – Audio			
8		Program transmission – Television			
9		Other services			
10		Subtotal (account 504)			
11	506	Other local service revenues			
12		Total (lines 1, 2, 3, 10 and 11)			
		TOLL SERVICE REVENUES			
13	510	Message tolls			
14	511	Wide area toll services			
	512	Toll private line services			
15		Voice Grade Services – Other Than Data			
16		Less Than Voice Grade Services			
17		Data Services			
18		Program transmission – Audio			
19		Program transmission – Television			
20		Other services			
21		Subtotal (account 512)			
22	516	Other toll service revenues			
23		Total (lines 13, 14, 21 and 22)			
		MISCELLANEOUS REVENUES			
24	521	Telegraph commissions			
25	522	Earth station revenues			
26	523	Directory advertising and sales			
27	524	Rent revenues			
28	525	Revenues from general services and licenses			
29	526	Other operating revenues			
30		Total (lines 24 to 29, inclusive)			
		UNCOLLECTIBLE REVENUES			
31	530	Uncollectible operating revenues – Dr			
32		TOTAL OPERATING REVENUES (lines 12, 23 and 30, less line 31)			

( ) denotes reverse amount

[FR Doc. 82-28014 Filed 10-8-82; 8:45 am]
BILLING CODE 6712-01-C

47 CFR Part 31

[CC Docket No. 82-679; RM-4084; FCC 82-424]

Amendment of Commission's Rules to Change the Basis of Depreciation and Retirement Procedures for a Certain Account, and to Reclassify Network Channel Terminating Equipment, Including Subscriber Pair Gain Equipment to a Certain Account

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is considering amending the depreciation and retirement procedures for the "Station connections-other" subclass of account 232 and transferring the plant to outside plant accounts, and classifying all network channel terminating equipment and subscriber pair gain equipment to account 221, "Central office equipment," regardless of location. This Notice is the result of a petition filed by AT&T on March 15, 1982. Public Notice was given on April 5, 1982. The depreciation and retirement procedures for the investment in the "station connections–other" account will no longer be applicable.

DATE: Comments are due on or before November 8, 1982. Reply comments are due on or before November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

Adopted: September 23, 1982.

Released: October 1, 1982.

I. Introduction

In the matter of amendment of Part 31, Uniform System of Accounts For Class A and Class B Telephone Companies, of the Commission's Rules and Regulations to change the basis of depreciation and retirement procedures for the "Station connections-other" subclass of account 232, and to reclassify network channel terminating equipment, including subscriber pair gain equipment, located on customer premises, to account 221, "Central office equipment." CC Docket No. 82–679 (RM 4084).

1. Notice is hereby given of a proposed rulemaking to provide for the changing of the accounting treatment for certain plant accounts. On March 15, 1982, American Telephone and Telegraph Company (AT&T) on behalf of itself and the Bell System companies filed a petition to amend the system of accounts for Class A and Class B telephone companies. AT&T proposes the following changes in accounting treatment to be effective January 1, 1983 [1]

a. That the depreciation and retirement procedures for the investment in the "Station connections-other" subclass [2] of account 232 be based upon the procedures employed for account 242:1, "Aerial cable," and account 242:3, "Buried cable"; and

b. That network channel terminating equipment, including subscriber pair gain equipment, located on customer premises be reclassified from account 234, "Large private branch exchanges," to account 221, "Central office equipment."

2. In response to AT&T's petition, the Commission issued a Public Notice (Report No. 1344), on April 5, 1982, permitting interested parties to file statements opposing or supporting the notice. Timely comments were submitted by GTE Service Corporation (GTE).

II. Background

3. The "Station connections-other" subclass was established by this Commission in its *First Report and Order*, CC Docket No. 79–105, 85 FCC 2d 818 (1981), which ordered all subject carriers to identify and assign their investment in account 232 into at least two subclasses, "Station connections-inside wiring" and "Station connections-other". "Station connections-inside wiring" is that segment of wiring from the protector to the customer premises equipment, and "Station connections-other" is that portion of plant previously referred to as the "drop and block" which connects the outside distribution network with the customer premises and is comprised of cabling, station protector, and wiring.[3]

4. The First Report and Order required subject telephone carriers to provide the Commission with the accounting procedure to be used for the station connections account. In a letter dated December 10, 1981, AT&T was granted permission to continue using the activity in account 231, "Station apparatus," to serve as the basis for retiring plant recorded as "Station connections-other." This permission was granted on an interim basis pending the filing of a petition for rulemaking by AT&T to resolve the accounting for this subclass.

III. Depreciation and Retirement Procedures for "Station connections-other"

5. In support of its proposed change in depreciation and retirement procedures, AT&T states that depreciation and retirement procedures for "Station connections-other," which encompasses the drop and block wire and associated protector, presents difficulties because of the great number of items involved, the volume of transactions, the relatively low cost for individual units, and the problems with tracking actual physical retirements. Even though the inclusion of drop and block wires in station connection assets originally simplified its accounting procedures, [4] AT&T feels that it is no longer feasible or proper to base retirement and related entries on station apparatus activity. AT&T explains that drop and block wire activity, including physical retirements, is not necessarily associated with station apparatus activity, and local telephone companies will have no way of knowing the specific nature of station apparatus activity since they will, in more and more cases, not be the provider of the customers' station apparatus equipment.

6. AT&T states that since the drop and block wires use the same or similar materials as the local distribution plant to which they are connected and experience many of the same causes for loss in service value and retirement, the aerial and buried cable outside plant accounts are the appropriate vehicles upon which to base depreciation and retirement procedures for the drop and block wire portion of the station connections account. AT&T, therefore, proposes that when a retirement unit of aerial or buried local distribution cable is retired, a proportionate amount of the investment in the related drop and block wire will also be retired.

7. GTE's comments support the proposal that depreciation and accounting for investment in the "Station connections-other" subclass be consistent with that accorded aerial and buried cable.

8. Although AT&T proposes to use the outside plant life and salvage

[1] AT&T also requested that any telephone company desiring to make the proposed revisions effective retroactive to an earlier date in calendar year 1982 be permitted to do so.

[2] "Subclass," as applied to depreciable plant, means that portion of a "class" of plant, to which a specific depreciation rate is applied which is different from those applied to other "subclasses" of the same "class" of such plant.

[3] CC Docket 79–105, *supra*.

[4] Amendments to Part 31 of the Commission's rules and regulations with respect to accounting for station apparatus, station installations and station wiring, Docket 11769, *Report and Order*, 21 FR 7446 (September 1956).

characteristics as a basis for depreciation for the investment in "Station connections-other," it does not propose to reclassify this investment to the outside plant accounts. AT&T feels that retaining the drop and block wire investment in the "Station connections-other account will facilitate the separate identification of the investment and reflect the fact that each drop and block wire is necessarily dedicated to a particular customer location. Additionally it states that the proposal will allow the retention of the existing accounting treatment for drop and block wires, e.g., charges to account 605, "Repairs of station equipment," for the replacement of aerial drops with underground drops, plant assignment and dispatch time, etc. AT&T would divide the "Station connections-other" subclass of account 232 into aerial and buried subaccounts based upon the portion of the drop and block wires served by aerial cable or aerial wire (for the aerial drop and block wire subaccount) or served by buried or underground cable (for the buried drop and block wire subaccount).

9. In Docket 79–105 this Commission found that the drop and block portion of the station connection is similar in nature to the local distribution network and its physical retirement is not necessarily associated with station activity.[5] To base the depreciation and retirement accounting for the drop and block investment on outside aerial and buried cable plant activity, which it is similar to and identifiable with, is a logical step. Drop and block wires exhibit life characteristics similar to accounts 242:1, "Aerial cable," and 242:3, "Buried cable," investment. We propose, therefore, that the accounting for depreciation and retirement procedures and depreciation rates used for these outside plant accounts also be used for the drop and block investment.

10. We are not convinced that the drop and block investment should remain in the station connection account. It appears that, if the drop and block wire is a mere extension of the aerial cable and buried cable local distribution network, this investment should be transferred to the outside plant accounts. AT&T states that the drop and block investment should remain in a station account because it will reflect the fact that each drop and block wire is, by its nature, necessarily dedicated to a particular customer location. We fail to see the advantages of maintaining this relationship between the stations and drop and block plant. As AT&T itself concedes, drop and block retirements are not generally affected by station activity. We, therefore, propose that the "Station connections-other" subclass be transferred to accounts 242:1 and 242:3.

11. AT&T also claims that retaining the drop and block investment in a station account would allow the retention of the existing accounting of Section 31.6–64, "Extensive replacement," which provides for the write-off of extensive replacements of drop and block wires through account 138, "Extraordinary maintenance and retirements." We believe that the transfer of the drop and block investment to outside plant accounts need not prevent our Rules from retaining this accounting. We propose that appropriate Sections of Part 31 be revised to allow for the extensive replacements of any outside plant to be chargeable to account 138 and cleared to their appropriate maintenance account, if so authorized by this Commission.

IV. Reclassification of Network Channel Terminating Equipment

12. AT&T states that all network channel terminating equipment, including subscriber pair gain equipment, is included in account 221 with the exception of equipment located on the customer premises. All network channel terminating equipment and subscriber pair gain equipment installed at a large PBX location on customer premises is included in account 234. The equipment has been included in the large PBX account because of its close proximity to the PBX.[6]

13. Network channel terminating equipment is used to provide transmission channels for transmitting and receiving signals as well as for testing the network channels. The network channel terminating equipment can be placed in field locations (including customer premises) or in the central office. They can also be used in pairs, with matching equipment located at both the central office and the customer premises.

14. Subscriber pair gain equipment uses loop electronics to permit the serving of many customers on a relatively few cable pairs. Subscriber pair gain systems require pairs of digital interface units, one at each end of the cable being used. One of the units is located within the central office building and the other is located either in the field (which may include environmentally controlled vaults, cabinets mounted on concrete pads, or huts) or at the customer premises. Subscriber pair gain equipment is considered under our present rules to be a type of network channel terminating equipment when it is located on customer premises.

15. AT&T states that the classification of similar equipment in different plant accounts based solely upon physical location is no longer appropriate. AT&T believes that the type of technology and common characteristics of the equipment, rather than its physical location, should be the primary determinants of its classification. AT&T also points out the administrative problems associated with the classification of identifcal equipment to different plant accounts. These problems include the ordering process, stocking arrangements, and administrative procedures.

16. GTE's comments state that all network channel terminating equipment, including subscriber pair gain equipment, located on customer premises should be included in account 221. GTE indicates that some network channel terminating equipment has also been included in account 231 and should be reclassified to account 221. GTE agrees with AT&T that disparate treatment of the same type of equipment creates numerous administrative and accounting problems.

17. This Commission has recognized the principle in CC Docket 78–196 that plant classification should normally be determined on the basis of the type or degree of technology evidenced by a given asset or group of assets and/or on the basis of the characteristics common to a specific group or class of assets, rather than on the basis of the physical location within a company's network.[7] Accordingly, we propose that all network channel terminating equipment including subscriber pair gain equipment be classified in account 221, regardless of physical location. However, since this equipment is located on customer premises, we also propose that the carriers maintain separate records to identify the cost of network channel terminating equipment in account 221 that is located on customer premises.

V. Other Issues

18. GTE suggested that this Commission should address treatment of company official and public pay stations which are included in accounts 231 and 234. We agree that changes are needed with respect to the treatment of company official and public pay stations. This issue, however, is beyond

[5] CC Docket 79–105, *supra*.

[6] CC Docket 11769, *supra*.

[7] *Second Supplemental Notice of Proposed Rulemaking and Order*, Docket No. 78–196, 88 FCC 2d 83 (1981).

the scope of this notice which only addresses problems raised in AT&T's petition. A separate notice of proposed rulemaking which is being issued simultaneously with this notice addresses the treatment of company official and public pay stations.

19. GTE states that if multi-party telephones remain regulated, Part 31 treatment of multi-party telephones is necessary in this proceeding. This issue is beyond the scope of this NPRM. The status of multi-party telephones is being addressed in Docket No. 81-216.[8]

VI. Conclusion

20. The Commission proposes to make any amendment to Part 31 of our Rules as adopted as a result of this proceeding effective not less than six months after issuance of a final order with respect to this rulemaking as required by Section 220(g) of the Communications Act, and to allow any carrier, at its option, to adopt these changes effective no earlier than January 1, 1983.

21. In compliance with the provisions of section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that these accounting changes can be readily implemented by all carriers subject to Part 31 without significant economic impact and, in fact, will ease the recordkeeping requirements of these carriers, both large and small.

22. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 CFR 1.1231.

23. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

24. Accordingly, it is ordered, That, pursuant to the provisions of Sections 4(i), 220(a) and 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 220(a) and 220(g), there is hereby instituted a Notice of Proposed Rulemaking into the foregoing matters.

25. It is further ordered, That all interested persons MAY FILE comments on the specific proposal discussed in this Notice on or before November 8, 1982. Reply comments shall be filed on or before November 13, 1982. In accordance with the provisions of § 1.419 of the Commission's rules and regulations 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, D.C.

26. It is further ordered, pursuant to section 220(i) of the Communications Act 47 U.S.C. 220(i), That the Secretary shall cause a copy of this Notice to be served on each state commission.

(Secs. 4, 303, 48 stat., as amended,1066, 1082; 46 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, is amended as follows:

1. Section 31.02-80 is amended by revising paragraph (c) to read as follows:

§ 31.02-80 Computation of depreciation rates.

* * * * *

(c) The company shall keep such records of property and property retirements as will reflect the service life of property which has been retired, or will permit the determination of service life indications by mortality, turnover, or other appropriate methods, and also such records as will reflect the percentage of salvage value, or net salvage value, as appropriate, for property retired from each class of depreciable plant. Further, account 232 will be amortized according to the schedule noted in account 232(b). (See also accounts 605 and 232 for the accounting for costs incurred in the disconnection and removal of station apparatus.)

* * * * *

2. Section 31.221 is amended by adding new Note G to read as follows:

§ 31.221 Central office equipment.

* * * * *

Note G.—This account shall include the investment in network channel terminating equipment and subscriber pair gain equipment regardless of its location.

3. Section 31.231 is amended to revise Note A to read as follows:

§ 31.231 Station apparatus.

* * * * *

Note A.—The cost of installation (including cabling, station protectors, and wiring on the customer's side of the protector) shall be charged to account 232, "Station connections" and/or account 605, "Installations and repairs of station equipment," as appropriate.

* * * * *

4. Section 31.232 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 31.232 Station connections.

(a) This account shall include the original cost of installing or connecting items of station apparatus and the original cost of inside wiring and cabling. (See also account 605, "Repairs of station equipment.")

(b) The investment in station connections is to be amortized to account 608, "Depreciation," with a corresponding credit to account 171, "Depreciation reserve," over a ten year period commencing no later than October 1, 1981. In calculating this amortization, the company shall first determine the net book cost of station connections by subtracting the depreciation reserve attributable to station connections from the book cost of station connections. This net book cost shall be divided by the number of months remaining in the ten year amortization period to determine the appropriate amortization for that month.

[8] *Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket 81-216, 85 FCC 2d 868 (1981).

For example, the amortization amount for the first month will be determined by dividing the net book cost by 120. The second month, the net book cost will be divided by 119, the third month by 118, etc. Carriers are to assume that the first month's reserve balance for this account is zero. However, if from the studies required by Docket 20188 or the results of the represcription process any reserve is identified as applicable to the station connections, it will be added to the station connections reserve and should be deducted from the remaining investment to be amortized. Also, the amounts resulting from the amortization schedule should not be considered in the determination of the separate reserves established for each category of plant. The embedded investment on the books up to October 1, 1981, will be fully recovered by October 1, 1991. For carriers who adopt the phase-in approach, the growth in investment in inside wiring between October 1, 1981, and September 30, 1982, shall be specifically identified and amortized according to the schedule noted above over ten years with full amortization completed by October 1, 1992. The growth in investment between October 1, 1982, and September 30, 1983, and between October 1, 1983, and September 30, 1984, shall be handled in the same manner with full amortization on all station connections completed by September 30, 1994. Under no circumstances shall the cumulative amortization credits to account 171 exceed the balance of the investment for station connections.

(c) Effective no later than October 1, 1981, for carriers who select a phase-in approach, when a station apparatus is installed except as part of a replacement or an inside move, the station connections installation cost shall be charged to this account on the following basis: 75% between October 1, 1981, and September 30, 1982; 50% between October 1, 1982, and September 30, 1983; 25% between October 1, 1983, and September 30, 1984; and 0% after September 30, 1984. The remaining cost not chargeable to this account shall be charged to the appropriate subaccount of account 605. Effective no later than October 1, 1981, for carriers who select a flash-cut approach, the otherwise capitalizable amount chargeable to the station connections account shall be expensed to the appropriate subaccount of account 605.

* * * * *

5. Section 31.242:1 is amended by adding a new Note D to read as follows:

§ 31.242:1 Aerial cable.

* * * * *

Note D.—Drop and block wiring associated with aerial cable shall be included in this account.

6. Section 31.242:3 is amended by adding a new Note D to read as follows:

§ 31.242:3 Buried cable.

* * * * *

Note D.—Drop and block wiring associated with buried cable shall be included in this account.

7. Section 31.244 is amended to revise Note B to read as follows:

§ 31.244 Underground conduit.

* * * * *

Note B.—The cost of pipes or other protective covering for underground drop and block wires shall be charged to accounts 242:1 or 242:3, as appropriate. However, the cost of pipes or other protective covering for inside wiring shall be charged to account 232 or account 605 (effective October 1, 1981).

8. Section 31.6–64 is amended to read as follows:

§ 31.6–64 Extensive replacements.

When it becomes necessary to replace the majority of station apparatus, inside wires, or drop and block wires assocated with outside plant in any given central office district, together with any number of such items in continuous districts, the cost of the replacements chargeable to account 605, "Installations and repairs of station equipment," if so authorized by this Commission upon application to it, shall be charged to account 138, "Extraordinary maintenance and retirements," and cleared to account 605 over the period specified in the authority.

9. Section 31.605 is amended to revise paragraph (d) to read as follows:

§ 31.605 Installations and repairs of station equipment.

* * * * *

(d) This account shall include also amortization of costs of extensive replacements of station apparatus, inside wires, and drop and block wires associated with outside plant which under conditions provided in § 31.6–64 have been included in account 138, "Extraordinary maintenance and retirements."

10. Section 31.608 is revised to read as follows:

§ 31.608 Depreciation.

This account shall include the amount of depreciation charges applicable to the accounting period for all classes of depreciable telephone plant, except amounts chargeable to clearing accounts. The depreciation charges shall be made in accordance with §§ 31.02–80 to 31.02–82 and 31.2–23(c). This account shall also include the amount of amortization charges applicable to the accounting period for the amortization of station connections.

Note.—Account 232 for amortization schedule; note accounts 315 and 174 for depreciation of miscellaneous physical property.

[FR Doc. 82–27968 Filed 10–8–82; 8:46 am]

BILLING CODE 6712–01–M

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47 CFR Part 31

[CC Docket No. 82–681; FCC 82–426]

Modifications to the Uniform System of Accounts for Class A and Class B Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is considering modifying the Uniform System of Accounts for Part 31 telephone companies. This Notice is the result of detariffing customer premises equipment and proposed detariffing of customer provided cable/wirng installed as part of an intrasystem for PBXs and key systems. This action will reduce the level of reporting requirement placed upon the subject carrier.

DATES:

Comments are due on or before November 8, 1982.

Reply comments are due on or before November 23, 1982

ADDRESS: Submit Comments to Federal Communications Commission, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughn, Accounting and Audits Division, Common Carrier Bureau, 634–1861.

SUPPLEMENTARY INFORMATION: 47 CFR Part 31, Communications Common Carriers, Federal Communications Commission, Telephone Uniform System of Accounts.

Adopted: September 23, 1982.

Released: October 1, 1982.

In the matter of modifications to the Uniform System of Accounts for Class A and Class B Telephone Companies required by detariffing of customer premises equipment and proposed detariffing of customer provided cable/wiring installed as part of an intrasystem of PBXs and key sys ems. CC Docket No. 82–681.

Introduction

1. In this Notice of Proposed Rulemaking (NPRM), the Commission proposes to amend the Uniform System of Accounts for Class A and Class B Telephone Companies (USOA), Part 31 of the Commission's Rules and Regulations, to reflect recent Commission decisions concerning the detariffing of customer premises equipment (CPE) [1] and the expensing of inside wiring.[2] As a result of these decisions, the currently prescribed accounts provide for the recording of certain regulated and nonregulated investment and expenses in the same accounts. To correct this, we are proposing new accounts and new accounting instructions for certain regulated plant items acquired, and expenses incurred, effective six months after a final rule is issued in this proceeding. Although Section 220(g) of the Communications Act requires at least six months notice before the rule changes are to take effect, we propose to permit carriers to implement these changes on a voluntary basis beginning January 1, 1983.

2. This NPRM proposes the following accounting changes: (1) New account classifications and accounting instructions for telephone company owned coin-operated and credit card telephones; (2) new instructions to reclassify station apparatus, key systems and private branch exchanges (PBXs) when used by a telephone company as part of their regulated business; (3) new accounting instructions to establish the intrasystem concept for PBXs and key systems and to provide for the detariffing of new intrasystem wiring; (4) new instructions to clarify the accounting for network terminating wire installed for large PBXs; and (5) new instructions to account for detariffed PBXs or key systems installed by telephone companies on a sale or lease basis.

Background

3. In our *Final Decision and Order*, Docket 19129, 64 FCC 2d 1 (1977), we stated that the accounting system should be modified so as to place the burden of all costs associated with station connections on the causative rate payer. Based on that statement, AT&T filed a petition for rulemaking (RM 3017) which proposed that the Uniform System of Accounts (USOA) be amended to provide, *inter alia*, for partial expensing of certain costs incurred in the initial installation of telephone service for a customer. AT&T also proposed to separate the embedded investment recorded in account 232, "Station connections," into two categories: the first category would include those embedded costs that would continue to be capitalized and depreciated over the expected life of the plant; the second category would include those embedded costs that in the future would be expensed when incurred and which AT&T proposed to amortize in equal amounts over a ten year period.

4. In response to AT&T's petition, *Id.* in 1979 the Commission released a *Notice of Proposed Rulemaking*, Docket 79-105, 44 FR 48988, which proposed, *inter alia*, that the entire cost of station connections recorded under account 232 should be charged to expense including the drop and block wire, underground service wire, protector, and all inside wiring. The majority of the respondents disagreed with our proposal and strongly advocated that the costs of station connections should be segregated into two separate subclasses, inside wiring and service wire (other), and that the service wire (other) category (which would include the drop and block wire and the protector) continue to be capitalized. The majority of the respondents agreed that the inside wiring should be expensed, but they disagreed as to whether a phase-in [3] or a flash-cut [4] approach should be implemented.

5. After reviewing the comments we issued our *First Report and Order* in Docket 79-105. We found that the "final answer" to our effort to ensure fair and evenhanded competition and the proper assignment of the cost of inside wiring to the cost causative customer "rest[ed] not with accounting changes but rather with the ultimate deregulation of this activity." (85 FCC 2d at 827) Nevertheless, we also found that "it would be inappropriate and premature to order such deregulation without first allowing interested parties to comment as well as to provide the needed input to the technical and administrative questions yet unanswered." *Id.* at 827. To accomplish such deregulation, we stated that we would issue a separate Further Notice of Inquiry (FNOI) to solicit comments for the proposal to deregulate inside wiring. Such a Further Notice of Inquiry was subsequently issued on May 26, 1981, 86 FCC 2d 885. In the interim, to alleviate the immediate problem associated with the current practice of capitalizing inside wiring, which was growing at an alarming rate, we revised the accounting to require all subject carriers to expense the inside wiring portion including the intrasystem wiring for PBXs and key systems to account 605, "Installation and repairs of station equipment," effective October 1, 1981.

6. In our Computer II orders we determined that, *inter alia*, the provision of CPE [5] was not communications common carriage, subject to regulation, and should be provided separate and apart from a carrier's tariffed offerings. The Commission stated it would be necessary for carriers to terminate existing CPE offerings, to detariff CPE, and to remove the costs associated with CPE from utility revenue requirements. On *Reconsideration* the Commission stated that the detariffing of CPE would be accomplished through a bifurcated transition plan that distinguished between "new" and "embedded" CPE and it reaffirmed that position on *Further Reconsideration Order*. In the *Further Reconsideration Order*, we stated:

> Under our bifurcation plan embedded CPE is that equipment or inventory which is tariffed or otherwise subject to the jurisdictional separation as of the bifurcation date (January 1, 1983). Any other CPE which is acquired by a carrier or manufactured by an affiliated entity after that date is considered new CPE.

88 FCC 2d 512 at para. 45. Under this plan only new CPE would be detariffed on or before January 1, 1983. Embedded CPE would be detariffed after the completion of a separate "implementation proceeding" that will address capital recovery and asset valuation, various methods by which transition to an unregulated CPE environment may be achieved, and the establishment of an appropriate time period for removal of embedded CPE investment from separations and a carrier's rate base.

Discussion

7. We are now proposing new or amended accounting rules in view of the

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[1] *See* Second Computer Inquiry or Computer II. *Final Decision* in Docket 20828, 77 FCC 2d 384 (May 1980); *Reconsideration Order*, 84 FCC 2d 50 (December 1980); *Further Reconsideration Order*, 88 FCC 2d 512 (October 1981); *Review pending sub. nom. Computer and Communication Industry Assoc. v. FCC*, Nos. 80-1481 *et al.* (filed May 5, 1980, D.C. Cir.); and *Notice of Inquiry* in Docket 81-893, 89 FCC 2d 694 (April 1982).

[2] *See First Report and Order* in Docket 79-105, 85 FCC 2d 818 (March 1981); *Further Notice of Inquiry*, 86 FCC 2d 885 (May 1981).

[3] Phase-in is a gradual approach to expensing capitalized costs.

[4] Flash-cut is an immediate expensing approach on or after a set date.

[5] *Reconsideration Order*, para. 28, n. 10. "Customer premises equipment includes all equipment provided by common carriers and located on customer premises except over-voltage protection equipment, inside wiring, coin-operated or pay telephones, and multi-plexing equipment to deliver multiple channels of the customer."

changed operating environment resulting from the detariffing of CPE and the expensing of inside wiring and request specific comments thereon. In commenting in this proceeding, interested parties may reference their comments submitted in Docket 20828, 81–216, 85 FCC 2d 868 (1981) and 79–105 FNOI so that they may be considered in addition to any comments submitted on our specific proposals. Our proposed revisions are discussed in the following paragraphs.

Accounting for Coin-Operated and Credit Card Telephones (Public Telephone Equipment)

8. We propose to establish a new plant account and a new expense account for coin-operated and credit card telephones (public telephone equipment). The new accounts are account 235, "Public telephone equipment," and account 607, "Repairs of public telephone equipment."

9. Currently, investment in public telephone equipment is recorded in account 231, "Station apparatus," which is primarily comprised of the type of equipment to be detariffed under *Computer II*. In its *Computer II Reconsideration Order*, however, the Commission clearly stated that public telephones were to remain as a tariffed offering. In view of the foregoing, we believe that public telephones should not be included in the same plant account with equipment that will be offered on a detariffed basis in the future. Accordingly, we propose that the investment for all public telephone equipment installed six months after a final rule is issued in this proceeding should be recorded in the new account 235. We also propose that carriers may, at their option, begin using this account for public telephone equipment installed January 1, 1983 and thereafter. When the valuation questions associated with the allocation of depreciation reserves among the various categories of embedded plant are resolved in Docket 81–893, we propose to reclassify the investment for embedded public telephones to account 235.

10. We propose that all expenses for repairs of public telephone equipment be recorded in account 607. The activities that we are proposing to be recorded in account 607 are as follows: 1) cost of replacing the coin-operated and public credit card telephone with an operating spare; 2) cost of the premise wiring and its associated labor; and 3) all normal and ordinary maintenance. We propose that the above mentioned activities should be charged to expense, account 607, on a flash-cut basis effective six months after a final rule is issued in this proceeding. Further, we propose that carriers, at their option, should be permitted to begin using this account for expenses incurred January 1, 1983 and thereafter.

11. In addition to proposing new account classifications for public telephone equipment, we are also proposing to revise plant accounting procedures for public telephones. We are proposing this change because the "cradle-to-grave" accounting [6] applied to equipment recorded in account 231 appears to be inappropriate for equipment recorded in the new account 235.

12. The "cradle-to-grave" accounting applied to the equipment in account 231 was established by the Commission in 1956.[7] The rule adopted by the Commission at that time was designed to simplify the accounting for station apparatus by: (1) Consolidating the investment for most of the equipment on subscribers' premises into account 231; and, (2) permitting the equipment to remain in account 231 from the time it was purchased with intent to use it on subscribers' premises until its final disposition by the telephone company. This procedure ignored for purposes of plant accounting, movement of equipment out of and back into active service during its overall life.

13. In establishing "cradle-to-grave" accounting for account 231, the Commission was addressing the accounting problem that resulted from frequent customer movement and its relationship to customer premise station apparatus. While frequent customer movement did present an accounting problem for most of the station apparatus recorded in account 231, it was not a problem for public telephone equipment which was more permanent than the other equipment. Thus, the primary basis for establishing cradle-to-grave accounting for account 231 was not applicable to public telephones. It appears, therefore, that, although cradle-to-grave accounting was acceptable for public telephone equipment when it represented only a minor part of account 231, it may not be acceptable for public telephones recorded in a separate account. Accordingly, we propose not to use cradle-to-grave accounting for the new account 235, but instead propose to use the more traditional retirement unit basis [8] of depreciation accounting including the establishment of a Continuing Property Record (CPR) [9] on an accounting area basis.[10]

14. We recognize that the carriers will be required to provide a continuity of service for public telephones. Therefore, we propose that the carriers should capitalize based on historical data an appropriate number of public telephone sets and other equipment to be set aside as operating spares to be used as replacements as the need arises. We solicit comments as to what equipment should be included as operating spares in account 235.

15. Also, we propose, effective six months after a final rule is issued in this proceeding, other material or equipment purchased for inventory in connection with public telephone equipment should be recorded in account 122, "Material and supplies," instead of account 231. Further, we propose that carriers, at their option, should be permitted to begin using this account to record inventory purchased for public telephones effective January 1, 1983 and thereafter. In this notice, we are not proposing any change in the accounting for drop wire, protector and grounding, underground cable, aerial cable, and buried cable/wire installed for public telephones.

16. We are aware that there are occasions when a telephone extension is provided with public telephones and has the same telephone number. However, the extension telephone is installed for the exclusive use of the business establishment, e.g., gas stations and restaurants. Therefore, these telephones are subject to our *Computer II* decision and have been detariffed. The inside wiring installed for these telephones continues to be provided on a regulated basis when installed by telephone companies and recorded in accounts 232 and 605.

17. Further, to avoid confusion, we point out that the new account 235 is not proposed to include emergency telephone equipment (*i.e.*, highway, bridge, fire, and police, etc.) which might be construed as public telephone equipment. *Computer II* specifically identified "coin-operated or pay telephones" as remaining under tariff. Emergency telephone equipment is not in the coin-operated or pay telephone category. Therefore, emergency

[6] A form of plant accounting wherein life indication considers a unit of plant as being in service from the time it is first delivered and booked until it is finally junked, reclassified to another account, or is otherwise finally disposed of.

[7] Amended Part 31 of the Commission's Rules and Regulations with respect to accounting for station apparatus, station installations and station wiring, Docket 11760, *Report and Order*, 21 FR 7446 (September 1956).

[8] Commission's rules and regulations, Part 31, § 31.2–25.

[9] Commission's rules and regulations, Part 31, § 31.2–26(d).

[10] Commission's rules and regulations, Part 31 Appendix B.

telephone equipment is ordinary subscriber equipment, and it should be treated the same as other equipment treated under *Computer II.*

Accounting for Company Used Station Apparatus and Large PBXs

18. Currently, company used equipment is recorded in the same accounts as equipment installed on customer premises. The telephone sets, teletypewriters, radio equipment, facsimile equipment, key systems and small PBXs are recorded in account 231, and the large PBXs are recorded in account 234. *Computer II* detariffed this equipment when installed on customer premises, and new equipment installed on customer premises will not be recorded in the operating accounts after January 1, 1983. When it is installed for company use, however, the investment and costs of this equipment should be recorded in the operating accounts associated with the companies regulated offerings. However, it appears inappropriate to include new company used equipment in accounts 231 and 234 with embedded plant. The future treatment of embedded plant will be subject to decisions to come out of Docket 81-893, and the inclusion of new equipment in the same accounts with embedded plant would unnecessarily complicate implementation of those decisions. Moreover, if embedded customer premise equipment were to remain under regulation, accounts 231 and 234 would have declining balances and declining depreciable lives that would distort the depreciation of company used equipment. Therefore, we are proposing to reclassify company used equipment to other accounts.

19. We have tentatively decided that this equipment should be accounted for on a functional rather than by type of equipment basis. Under this approach the company used equipment that handles the switching of traffic would be recorded in account 221, "Central office equipment," and the company used equipment that handles the company's own internal business operations would be recorded in account 261, "Furniture and office equipment." Accordingly, we propose that all new company used telephone sets, teletypewriters, radio equipment, facsimile equipment, key systems and all PBXs or other terminal equipment installed six months after a final rule is issued in this proceeding shall be recorded in account 221 or account 261 based on function. Further, we propose that carriers, at their option, be permitted to follow this accounting for equipment installed January 1, 1983 and thereafter.

20. In addition, this accounting would necessitate the establishment of retirement units under these accounts covering this equipment. Therefore, we are proposing additions to the retirement units for these accounts. See appendix to this Notice. All retirements of this equipment would conform with our rules covering normal retirement accounting as prescribed in the Commission's Rules and Regulations Part 31, § 31.2-25.

21. Additionally, on October 7, 1981, the Commission adopted an amendment to increase the dollar limit for expensing minor items from $50 to $200 to become effective no earlier than January 1, 1982.[11] The rationale for expensing minor items that cost $200 or less, e.g., administrative costs of maintaining inventory and depreciation records, we believe should be applied to new equipment described above. In addition, we propose extending the $200 criteria to be used as a basis for determining whether the company used equipment should be capitalized to account 221 or account 261, as appropriate, or charged to expense.

Accounting Instruction To Establish the Intrasystem Concept for PBXs and Key Systems and To Provide for the Detariffing of New Intrasystem Wiring

22. In *Computer II,* this Commission detariffed new customer premises equipment including PBXs and other station apparatus, but it did not detariff inside wiring. However, we subsequently issued a *Further Notice of Inquiry, supra, n. 2,* which among other things requested comments on whether the inside wiring of station connections should be deregulated. Although we consider the major questions associated with the deregulation of inside wiring to be beyond the scope of this rulemaking proceeding, we believe the wiring (multi-wiring or complex wiring) that connects PBX common equipment to station equipment presents a unique problem that should be addressed in this proceeding.

23. This wiring is unique because this Commission has viewed PBXs as intrasystems [12] and the Commission's Rules and Regulations, Part 68, Sections 68.2 and 68.215 established criteria to permit the installation of PBX intrasystems by parties other than regulated carriers. In our view a PBX intrasystem consists of common equipment (a switchboard or switching equipment shared by all stations), station equipment (usually, telephones or key telephone systems), and wiring connecting the common equipment and the station equipment. Under this concept, intrasystem wiring (multi-wiring or complex wiring) would be defined as all cable or wire and its associated components (e.g., connecting blocks, terminal boxes, conduit between buildings on the same customer's premises, etc.) which connect station components to one another or to the common equipment of PBX system. The majority of the comments and reply comments received in response to our *Further Notice of Inquiry* supported the detariffing of complex/multi-wiring. In addition, these parties recommended that the detariffing of such wiring become effective concurrently on the date that the equipment is detariffed. We would agree that intrasystem wiring should be detariffed and feel it would be inconsistent for intrasystem wiring to remain under tariff while the equipment at both ends of the system and the common equipment has been detariffed. Therefore, we propose to detariff intrasystem wiring in the same way and on the same basis as we detariffed CPE in *Computer II.* Intrasystem wiring would consist of all cable or wiring and associated components located inside a building or between a customer's different buildings located on the same or contiguous property not separated by a public thoroughfare. However, if a portion of the intrasystem wiring requires the use of the regulated network house cable (intrabuilding network cable), it could only be offered by a regulated carrier on a tariffed basis.

24. Further, intrasystem wiring would be applicable to key systems. Of course, not all key systems meet the definition we have established for consideration as an intrasystem. In order to remove any doubt for key systems, we propose that only those key systems that require common control equipment should be recognized as an intrasystem, including the associated intrasystem wiring. Otherwise, the wiring is a single or two line wiring that connects telephone sets with push buttons and is not a key system.

25. Currently, it is required that intrasystem wiring be recorded in account 232 and that station equipment and PBXs be recorded in accounts 231 and 234. We are proposing herein that these accounts be amended to preclude the recording of this intrasystem wiring, station equipment and intrasystem PBX.

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[11] *See* Docket 81-273, *Report and Order,* 87 F.C.C. 2d 1137.

[12] *See* Docket 81-184, *Memorandum Opinion and Order,* 88 FCC 2d 1436 (February 1982) para. 9.

Accounting for Network Terminating Wire [13]

26. There is a problem identifying what portion of account 234 remains under regulation. In this regard the Commission has established a demarcation point,[14] that can be used to segregate those costs that should be associated with the basic telephone network. Under the present accounting, the wiring (or small cable used instead of wires) installed from the permanent house cable terminal to the PBX is recorded under account 234. The problem is that this wiring or cable runs through the *demarcation point* mentioned above for large PBXs.

27. Accordingly, we propose that for all new installations, this wiring should be charged to expense account 605, "Installations and repair of station equipment," on a flash-cut basis effective six months after a final rule is issued. Additionally, we propose that carriers, at their option, should be permitted to begin using this account for expenses incurred January 1, 1983 and thereafter. The rationale for this change is that even though network terminating wire is a part of the network, it serves a specific customer's communication needs. If the customer decides to rearrange, relocate, or replace the premises equipment; the related network terminating wire would in all probability, require substantial modification to serve the changed equipment configuration. Moreover, the installation or rearrangement of this wire or cable is highly labor intensive. Thus, once network terminating wire is installed, it has a low intrinsic value compared to its installed cost, and that cost is properly attributed to the customer being served by that network terminating wire.

Accounting for Sale or Lease of Detariffed PBXs or Key Systems

28. Six months after a final rule is issued, or beginning January 1, 1983 for carriers that choose this earlier date, when a small PBX or key system, account 231, is installed that meets the criteria to be classified as new and constitutes an intrasystem, the related intrasystem wiring installed is considered to have been detariffed because it is a part of the system as we discussed in paragraphs 23 and 24. Special accounting provisions have to be established for telephone companies that do not offer these systems through a separate subsidiary. These accounting provisions are necessary to assure that the investment and costs for systems are properly separated from the regulated accounts. Additionally, the accounting provisions must recognize the possibility of both sale and lease of these systems.

29. When the system is sold by the telephone company directly (i.e., not through a separate subsidiary), we propose that the accounting we established in the *First Report and Order*, Docket 79-105, for the sale of new telephone sets be followed. Based on that accounting the telephone companies would record the investment, costs and revenues for these sales in account 124, "Merchandise and material held for sale," account 316, "Miscellaneous income," and account 327, "Other non-operating taxes."

30. When the system is leased by the telephone company directly, we propose that the telephone company record the original cost of the equipment in account 103. "Miscellaneous physical property." Further, we propose to apply the current rules associated with account 103 that pertain to recording all revenues and expenses, namely, account 315, "Income from miscellaneous physical property" and account 174, "Other deferred credits."

Other Dockets

31. The future accounting for embedded investment, the sale or lease of detariffed CPE proposed in this proceeding, and the sharing of direct and indirect cost associated with CPE's are being addressed in Docket 81-893. Therefore, we will defer all accounting problems relating to these matters to that docket. Moreover, the accounting prescribed in the *First Report and Order*, Docket 79-105, *supra*. at 837-838, will be adhered to except where this NPRM specifically proposes to amend the current rules.

32. The Commission has received a petition for rulemaking from AT&T RM 4084, that, *inter alia*, requests a change in the accounting treatment for certain telephone plant recorded in account 234. This issue is beyond the scope of this NPRM and will be addressed in a separate notice of proposed rulemaking which is being issued simultaneously with this notice.

Conclusion

33. The Commission feels that the proposals set forth in this NPRM are consistent with Docket 78-196, 88 FCC 2d 83,[15] which is the establishment of a new USOA for Parts 31 and 33 telephone carriers and the modified Consent Decree that requires the divestiture of the Bell Operating Companies. Further, we believe that these proposals will substantially assist in resolving any separation problems or any future changes that may be required in the implementation of *Computer II*.

34. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we certify that these accounting changes can be readily implemented by all carriers subject to Part 31 without significant economic impact and, in fact, will ease the recordkeeping requirements of these carriers, both large and small.

35. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex-parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex-parte* presentation in any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex-parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex-parte* presentation addressing matters not fully covered in any written summary of that presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex-parte* presentation discussed above must state on its face the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

36. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

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[13] Network terminating wire is that portion from the intrabuilding network cable terminal to and including the demarcation point. Intrabuilding cable is the cable installed within the same building, excluding the network terminating wire, on the telephone company's side of the demarcation point.

[14] *See* para. 23, *supra*.

[15] These proposed accounting changes and proposed accounting instructions were not deferred because of the need to implement our *Computer II* decision in an effective and timely manner.

37. Accordingly, it is ordered, That, pursuant to the provisions of Sections 4(i), 220(a) and 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 220(a) and 220(g), there is hereby instituted a Notice of Proposed Rulemaking into the foregoing matters.

38. It is further ordered, That all interested parties may file comments on the specific proposals discussed in this proceeding on or before November 8, 1982. Reply comments shall be filed on or before November 23, 1982. In accordance with the provisions of § 1.419 of the Commission's rules and regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the documents will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, N.W., Washington, D.C.

39. It is further ordered, That pursuant to Section 220(i) of the Communications Act, 47 U.S.C. 220(i), the Secretary shall cause a copy of this Notice to be served on each state commissions.

(Secs. 4, 303, 48 state., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 31 [AMENDED]

Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, is proposed to be amended as follows:

1. Section 31.02–82 is amended to add the following:

§ 31.02–82 Classes of depreciable telephone plant.

* * * * *

Buildings (Account 212).
Central office equipment (Account 221).
Station apparatus (Account 231).
Station connections (Account 232).
Large private branch exchanges (Account 234).
Public telephone equipment (Account 235).
Pole lines (Account 241).
Aerial cable (Account 242.1).
Underground cable (Account 242.2).
Buried cable (Account 242.3).
Submarine cable (Account 242.4).
Aerial wire (Account 243).
Underground conduit (Account 244).
Furniture and office equipment (Account 261).
Vehicles and other work equipment (Account 264).

* * * * *

2. Section 31.103 is revised to read as follows:

§ 31.103 Miscellaneous physical property.

This account shall include the company's investment in physical property other than property the investment in which is includible in accounts 100:1, "Telephone plant in service," 100:2, "Telephone plant under construction," 100:3 "Property held for future telephone use," and 100:4 "Telephone plant acquisition adjustment." It shall include the company's investment in telephone property retired and held for sale; also property such as lighting, water, power, non-tariffed leased private branch exchanges, key systems and station apparatus, and manufacturing plants, not incident to the company's telephone operations, and assessments against miscellaneous physical property for construction of public improvements.

3. Section 31.124 is revised, also revise and redesignate existing Note as Note A and add a new Note B to read as follows:

§ 31.124 Merchandise and material held for sale or lease on a detariffed basis.

This account shall include the cost of all station equipment purchased for lease or resale and the cost of material and supplies held for use in the provision of repair service on customer provided equipment or equipment leased on a non-tariffed basis. (Note accounts 231 and 234) The cost shall include applicable transportation charges, sale and use taxes, cash and other purchase discounts. Inventory shortages and overages shall be charged and credited, respectively, to account 316.

Note A: The cost of material used to install and connect, and maintain station apparatus that is provided on a resale basis shall be charged to account 316, "Miscellaneous income."

Note B: The cost of material used to install and connect station apparatus that is provided on leased basis not tariffed shall be charged to account 103, "Miscellaneous physical property," or account 315, "Income from miscellaneous physical property," as appropriate.

4. Section 31.221 is amended by revising paragraph (a) and the items list and adding new Notes E and F to read as follows:

§ 31.221 Central office equipment.

(a) This account shall include the original cost of electrical instruments, apparatus, and equipment, other than station equipment used for official business or installed on customer's premises, in central offices (including terminal and test rooms), repeater stations and test stations used in trasmitting traffic and operating signals, and similar equipment in operators' schools and other centralized locations. (See also Notes E and F.)

* * * * *

ITEMS

(Note § 31.01–8)

Aisle—lighting equipment.
Announcement equipment-time, weather forecast, etc.
Automatic message recording equipment.
Balconies for distributing frames.
Banks—connector, selector.
Batteries.
Battery cabinets.
Boards—floor alarm, power, test, service observing.
Building alterations, minor, such as opening and closing holes in ceilings, partitions, walls and floors to permit installations of equipment, power conduit, and wiring.
Cables. (See also Note B to this account.)
Calculagraphs.
Call registers.
Carrier current equipment.
Carrier line filters.
Circuit breakers.
Covers for transmission power apparatus.
Data sets. (See also Note E of this account.)
Desk sets, hand sets, wall sets, and combined sets, including those used at main extension, and private branch exchange stations. (See also Note E of this account.)
Desk and tables when equipped with central office telephone equipment. (See also Note A of this account.)
Engines, including special foundations not a part of buildings.
Facsimile equipment. (See also Note E of this account.)
Frames—alarm, connector, decoder, decoder connector, line finder, line switch, repeater, selector, sender, test.
Fuse boards.
Fuse panels.
Generators, including special foundations not a part of buildings.
Jumper wires.
Key indicator equipment.
Line concentrator equipment.
Line filters.
Loading coils. (See also Note C to this account.)
Loudspeaker equipment.
Main and intermediate frames.
Meters.
Mobile telephone equipment. (See also Note E of this account.)
Motors, including special foundations not a part of buildings.
Multiplex apparatus.
Operators' transmitters.
Operators' chairs.
Operators' head sets.
Permits and privileges and rights of way for installation of externally mounted

central office equipment. (Note also § 31.2–22(b)(7) and Note F to account 211.)
Platforms, not part of buildings.
Pole changers.
Power circuits for emergency use including payment for installation by others of circuits not owned.
Power panels.
Power plants.
Printer—telegraph equipment. (See also Note E of this account.)
Private branch exchange equipment. (See also Note E of this account.)
Protectors.
Pulse machines and tone machines.
Radio transmitting and receiving equipment.
Rectifiers.
Register cabinets.
Relay racks and coil racks.
Relays.
Repeater sets.
Rheostats.
Ringing machines, including special foundations not a part of buildings.
Rolling ladders.
Station switching and signaling devices. (See also Note E of this account.)
Submarine cable repeaters.
Switchboards and other electrical equipment used in operators' school.
Switchboards—subscribers' "A" and "B" trunk, toll, dial system.
Switches—connector, line repeater, selector, repeater, test, distributor.
Tarpaulins.
Telegraph instruments and equipment.
Telephotographic equipment.
Teletypewriter switchboards and equipment.
Test boards.
Testing and routining central office equipment prior to assignment to service.
Testing equipment and tools, central office. (See also Note D to this account.)
Test tables.
Ticket holders.
Toll ticket carriers.
Traffic load counting equipment.
Turrets.
Water stills for battery service.

* * * * *

Note E—The cost of station equipment for use in official business that is not an integral part of the switching system shall be charged to account 261.

Note F—When station equipment that is installed costs less than $200 per property (retirement) unit the cost shall be charged to account 604, "Repairs of central office equipment."

5. Section 31.231 is amended by revising paragraph (a) and Note B as follows:

§ 31.231 Station apparatus.

(a) This account shall include the original cost of station apparatus, including small private branch exchanges and booths, installed either for customers' or the company use. (Note also account 221, account 235, account 261.) This account shall also include the cost of material in stock which are normally used as station apparatus or additions thereto, as distinguished from items normally used for repair purposes. (Note account 124.) Items included in this account which are normally used as station apparatus shall remain herein until finally disposed of or until used in such manner as to be includible in other accounts.

* * * * *

Note B—The cost of cross-connection boxes, distributing frames or other distribution points which are installed to terminate intrabuilding network cable shall be charged to account 242.1, "Aerial cable."

* * * * *

6. Section 31.232 is amended by revising items list and Notes A and B also add new Note F as follows:

§ 31.232 Station connections.

* * * * *

ITEMS

(Note § 31.01–8)

The wires or cables from the station apparatus to the point of connection with the general overhead or underground system or to the junction boxes where the intrabuilding network cable or other cable terminates. This includes circuits, carried by means of wire or cable, extending to the cable terminal in cases where connection is made with a general cable system, or to the point of connection with the aerial wire plant in cases where connection is made with a general wire system.
The wires or cables installed specifically to serve as trunk, battery, or generator circuits from a small private branch exchange to the point of connection with the permanent intrabuilding network or outside cables or wires.
The wires or cables installed specifically to serve as trunk, battery, or generator circuits for large private branch exchanges from the point of connection with the permanent intrabuilding network cable or service wires up to and including the network interface jack.. Connecting blocks, ground wires, ground rods, station protectors, clamps, cleats, nails, screws and other material used in the installation of station apparatus and inside wiring and cabling.
Intrasystem wiring—cable or wire used to connect station system components on a customer's premises to one another. Includes cable or wiring between: common equipment of key or PBX systems and stations; main stations and extension stations, stations of intercommunicating systems; parts of a small private branch exchange, such as their distributing frame and switchboard; wall outlets or floor terminals and stations. (See also account 316 and account 103.)
Labor and other costs incurred in connection with station apparatus and station connection installations or additions thereto.
Brackets, bridle rings, insulators, knobs, span clamps, screws, sleeves, strand, tubes, and other material used in the installation of drop and block wires; trimming trees and other costs incurred in the installation of such wires; pipes or other protective covering for underground service connections; and permits and privileges for construction.

* * * * *

Note A.—Costs charged to this account prior to October 1, 1981, in connection with inside cabling are restricted to cables used in station installations instead of wires, such as those run from wall outlets or floor terminals to the station apparatus, and to cables used in installing small private branch exchanges. (See also account 316 and account 103.) The cost of wires or cabling used in the installing equipment includible in account 234, "Large private branch exchanges," *other than* those installed specifically to serve as trunk, battery, or generator circuits for large private branch exchanges from the point of connection with the permanent intrabuilding network cable or service wires up to and including the network interface jack, shall be included in account 234. (See also account 316 and account 103.) The cost of intrabuilding network cable, including associated cross-connection boxes, terminals, distributing frames, etc. is chargeable to account 242.1, "Aerial cable."

Note B.—The cost of outside plant, such as poles, or conduits, whether or not on private property, used with intrabuilding network cable shall be charged to the appropriate pole or conduit accounts. The cost of such plant used with intrasystem wiring shall be charged to accounts 232 or 605, as appropriate.

* * * * *

Note F.—Effective January 1, 1983, to the extent applicable; the items shown above shall be charged to account 316, "miscellaneous income," or account 103, "Miscellaneous physical property," as appropriate.

* * * * *

7. Section 31.234 is amended by revising items lists and Notes A, B and C also add new Notes D and E:

§ 31.234 Large private branch exchanges.

* * * * *

ITEMS

(Note § 31.01–8)

Cables or wires from distributing frame to switchboard.
Dial system private branch exchanges of types designed to accommodate 100 or more lines or which can normally be expanded to 100 or more lines, including any non-multiple manual switchboards used as attendants' positions in connection with such dial system exchanges.
Distributing frames.
Multiple manual switchboards.
Operators' chairs.
Operators' head sets and transmitters.
Power equipment, including special foundations.
Switching and signaling devices in large installations, such as certain key systems for governmental agencies, including relay rack equipment, apparatus cabinets, key cabinets, key boxes, and other components of such systems.
Switching equipment at switching or relay centers of large private line teletypewriter systems.
Television program supply equipment and other television equipment on customers' premises except portable equipment subject to use in central offices.
Wires or cable installed specifically to serve as trunk, battery, or generator circuits from a large private branch exchange to the point of connection with the network interface jack.

Note A.—The cost of intrabuilding network cable including their associated cross-connection boxes, terminals, distributing frames, etc., is chargeable to account 242:1.

Note B.—The cost of outside plant, whether or not on private property, used with intrabuilding network cable shall be charged to the appropriate outside plant accounts. The cost of such plant used with intrasystem wiring shall be charged to accounts 232/605 or 605, as appropriate.

Note C.—The cost of intrasystem wiring which is used to extend features from the common equipment of a large PBX system to stations shall be charged to accounts 232/605 or account 605. (See also account 316 and account 103.)

Note D.—Effective January 1, 1983 the cost of network terminating wire (the cable or wire from the riser terminal to the system network interface) shall be charged to account 605, "Installation and repairs of station equipment"

Note E.—Effective January 1, 1983 to the extent applicable, the items shown above shall be charged to account 316, or account 103, as appropriate.

8. Section 31.235 is added to read as follows:

§ 31.235 Public telephone equipment.

This account shall include the original cost, including the cost of installation, of coin-operated, credit card and pay telephones used by the public. (See also account 231.)

ITEMS

(Note § 31.01–8)

Concrete pad.
Housing-booths, directory hangers and shelves located at or in proximity to public telephones, and shields.
Pedestals, including base plate.
Public telephone signs.
Telephone sets—coin operated and credit card.

Note A.—The cost of operating spares shall be capitalized initially and included in account 235.

Note B.—The cost for replacement other than operating spares shall be charged to account 607, "Repair of public telephones."

Note C.—Effective January 1, 1983 when a telephone extension is provided with a public telephone the cost shall be charged to account 316 or account 103, as appropriate.

9. Section 241 is amended by adding a Note as follows:

§ 31.241 Pole line.

* * * * *

Note.—Effective January 1, 1983 when a new PBX or key system is installed that includes poles as part of the intrasystem, that does not cross a public thoroughfare, the cost of the poles shall be charged to account 103 or account 316, as appropriate.

10. Section 31.242:1 is amended by revising the items list and Note A also add a new Note C as follows:

§ 242:1 Aerial cable.

* * * * *

ITEMS

(Note § 31.01–8)

Air dryers.
Bonds and grounds.
Cable-block, feeder, main subsidiary.
Cable-intrabuilding, located inside buildings and used to distribute network access facilities to equipment rooms, cross-connection or other distribution points at which connection is made with station connection facilities.
Cable clamps.
Cable rings.
Cable terminals or boxes.
Closure and splice cases.
Cross-connection wires and fuses installed in the first equipment for service of intrabuilding network or outside cable terminals or boxes.
Floor terminal boxes and cross-connection boxes at wall outlets which are used to terminate intrabuilding network cable.
Fuse boxes.
Loading coils, building-out condensers, carrier-line filters, and cases therefor.
Main-frame-terminating cable extended to outside cable
Negative returns.
Permits and privileges for construction. (Note also 31.2–22(b)(7).)
Pole seats and balconies.
Pressure contactor-terminals.
Protectors and arresters.
Sleeves.
Strand suspension.
Tree guards.

Note A.—Intrabuilding network cable is considered an extension of aerial cable plant. It does not include cables or wires extending from terminal boxes of intrabuilding network cables to subscriber stations which are included in account 232 or account 606, or the cables for subscribers' private branch exchange systems which are included in account 232, account 605 (effective October 1, 1981) or account 234 as appropriate.

* * * * *

Note C.—Effective January 1, 1983 when a new private branch exchange or key system is installed that includes aerial cable as part of the intrasystem, that does not cross a public thoroughfare, the cost of the aerial cable shall be charged to account 316 or account 103, as appropriate.

11. Section 31.242:2 is amended by revising Note B and adding a new Note F as follows:

§ 31.242:2 Underground cable.

* * * * *

Note B.—The cost of cables used in stations installations or as drop wires shall be charged to account 232, 316 or 605, as appropriate.

* * * * *

Note F.—Effective January 1, 1983 when a new private branch exchange or key system is installed that includes underground cable as a part of the intrasystem, that does not cross a public thoroughfare, the cost of the underground cable shall be charged to account 316 or account 103, as appropriate.

12. Section 31.242:3 is amended by adding new Note C as follows:

§ 31.242:3 Buried cable.

* * * * *

Note C.—Effective January 1, 1983 when a new private branch exchange or key system is installed that includes buried cable as a part of the intrasystem, that does not cross a public thoroughfare, the cost of the buried cable shall be charged to account 316, or account 103, as appropriate.

13. Section 31.243 is amended by designating original Note to Note A and adding a new Note B as follows:

§ 31.243 Aerial wire.

* * * * *

Note B.—Effective January 1, 1983 when a new private branch exchange or key system is installed that includes aerial wire as a part of the intrasystem, that does not cross a public thoroughfare, the cost of the aerial

wire shall be charged to account 316 or account 103 as appropriate.

14. Section 31.244 is amended by adding a new Note C as follows:

§ 31.244 Underground conduit.

* * * * *

Note C.—Effective January 1, 1983 when a new private branch exchange or key system is installed that includes underground conduit as a part of the intrasystem, that does not cross a public thoroughfare, the cost of the underground conduit shall be charged to account 316 or account 103, as appropriate.

15. Section 31.261 is amended by revising the Items List and redesignating existing Note as Note A plus adding new Notes B and C as follows:

§ 31.261 Furniture and office equipment.

* * * * *

ITEMS

(Noted § 31.01–8)

Air conditioning units, portable.
Beds, cots, and couches.
Bins, counters, and shelves.
Bookcases.
Cabinets and filing cases.
Chairs, carpets, and rugs.
Data processing equipment.
Data sets. (See also Note B of this account.)
Davenports.
Dehumidifying units, portable.
Desks.
Desk sets, hand sets, wall sets, and combined sets, including those used at main, extension, and private branch exchange stations. (See also Note B of this account.)
Drapes.
Equipment in rest, dining, recreation and medical rooms.
Facsimile equipment. (See also Note B of this account.)
Fans, electric, portable.
Floor-scrubbing and polishing machines.
Gas and electric fixtures, portable.
Lockers and wardrobes, portable.
Microfilm equipment.
Mobile telephone equipment. (See also Note B of this account.)
Office devices, including addressing, billing, blueprinting, computing, dating, duplicating, mailing, photostat and recording machines, cash registers, check writers, postage meter machines, typewriters, etc.
Pianos and phonographs.
Printer-telegraph equipment. (See also Note B of this account.)
Private branch exchange equipment. (See also Note B of this account.)
Projection equipment.
Radio sets.
Racks—magazine, newspaper, umbrella, and clothing.
Refrigerators, portable.
Safes.
Station switching and signaling devices. (See also Note B of this account.)
Switchboard, special type public demonstration.
Tables.
Telegraph equipment. (See also Note B of this account.)
Television sets.
Vacuum sweepers.
Vending machines.
Water coolers.

* * * * *

Note B.—The cost of station equipment installed in central offices and used as an integral part of the switching system, not for official business, shall be charged to account 221.

Note C.—When station equipment that is installed costs less than $200 per property (retirement) unit the cost shall be charged to the appropriate expense account.

16. Section 31.6–61 is amended by revising paragraph (b) as follows:

§ 31.6–61 Cost of repairs.

* * * * *

(b) The cost of repairs does not include expenses associated with the provision of repair service on station equipment leased or sold to customers on a detariffed basis or customer provided equipment (Note also account 315 and account 316).

* * * * *

17. Section 31.6–65 is amended by adding a new account as follows:

§ 31.6–65 Operating expense accounts to be maintained.

* * * * *

Accounts for Class A Companies.

* * * * *

607 Repairs of public telephones.

* * * * *

Accounts for Class B Companies.

* * * * *

607 Repairs of public telephones.

18. Section 31.605 is amended by revising paragraph (a), the items list and Note A as follows:

§ 31.605 Installations and repairs of station equipment.

(a) This account shall include the cost of installing items of station apparatus (included in account 231) and the cost of inside wiring under either the phase-in or flash-cut approach. Under the phase-in approach this installation activity shall be charged to this account on the following basis: 25% between October 1, 1981, and September 30, 1982; 50% between October 1, 1982 and September 30, 1983; 75% between October 1, 1983 and September 30, 1984; and 100% after September 30, 1984. Under the flash-cut approach all costs of installation activity shall be charged to this account. Carriers shall maintain the cost of installing items of station apparatus and the cost of inside wiring under either of the above approaches in a separate subaccount. This account shall also include the cost of reconnecting customers' lines at customers' premises (Note also account 232, account 315 and account 316).

* * * * *

ITEMS

(Note § 31.01–8)

The wires or cables extending from the point of connection with (1) terminal boxes of intrabuilding network cables or (2) protectors or other terminating devices of services wires to station apparatus or customers' terminal equipment.
The wires or cables installed specifically to serve as trunk, battery, or generator circuits from a small private branch exchange to the point of connection with the permanent or service wires.
The wires or cables installed specifically to serve as trunk, battery, or generator circuits for large private branch exchanges from the point of connection with the permanent intrabuilding network cable or service wires up to and including the network interface jack.
Brackets, bridle rings, insulators, knobs, span clamps, screws, sleeves, strand, tubes and other material.
Changing inside wiring and service wires.
Changing type of telephone, such as from nondial to dial or from one color to another.
Cleaning station apparatus and large private branch exchange equipment.
Connecting blocks, jacks, ground wires, station protectors, clamps, cleats, nails, screws, and other material used in the installation of station apparatus and inside wiring.
Connecting or installing station apparatus.
Disconnecting customers' lines at customers' premises at the network interface or equivalent. If the disconnection is made in a central office, the cost thereof shall be charged to account 604, "Repairs of central office equipment." If the disconnection is made in the outside cable plant or in the intrabuilding cable plant, the cost thereof shall be charged to accounts 602:2, 602:3, or 602:4, as appropriate.
Disconnecting or removing station apparatus.
Inspecting, testing, and reporting on condition of equipment to determine

the need for repairs and replacements. (See also account 603.)
Intrasystem wiring—cable or wire used to connect station system components on a customer's premises to one another. Includes cable or wiring between: common equipment of key or PBX systems and stations; main stations and extension stations; stations of intercommunicating systems; parts of a small private branch exchange, such as their distributing frame and switchboard; wall outlets or floor terminals and stations.
Labor and other costs incurred in connection with station apparatus and wiring installations or additions thereto.
Material normally used as repair parts for station apparatus.
Moves or relocations of items of station apparatus.
Number plate changes.
Plant assignment and related clerical work (e.g., assigning plant facilities, service order dispatch, service order final completion, and assignment record administrative work).
Reconnecting customers' lines at customers' premises at the network interface or equivalent. If the reconnection is made in a central office, the cost thereof shall be charged to account 604, "Repairs of central office equipment". If the reconnection is made in the outside cable plant or in the intrabuilding network cable plant, the cost therof shall be charged to accounts 602:2, 602:3 or 602:4, as appropriate.
Removing inside wiring.
Removing sediment from and cleaning batteries.
Repairing used station equipment for reuse.
Replacing defective station apparatus.
Replacing dry-cell batteries.
Replacing minor items of large private branch exchanges, including labor and material used and the removal and recovery of the items retired less salvage recovered, except when such items are replaced through the replacement of retirement units. (Note also 31.2–25.)
Replacing one small private branch exchange with another.
Supply expense applicable to station apparatus being reused.
Testing for, locating and clearing trouble in station apparatus and large private branch exchanges. (See also account 603.)

Note A.—Costs chargeable to this account in connection with inside cabling are restricted to cables used in station installations instead of wires, such as those that run from wall outlets or floor terminals to the station apparatus, and to cables used in installing small private branch exchanges. The cost of wires or cabling used in installing equipment includible in account 234, "Large private branch exchanges," *other than* those installed specifically to serve as trunk, battery, or generator circuits for large private branch exchanges from the point of connection with the permanent intrabuilding network cable or service wires, up to and including the network interface jack, shall be included in account 234. The cost of intrabuilding network cable, including associated cross-connection boxes, terminals, distributing frames, etc. is chargeable to account 242:1, "Aerial cable."

* * * * *

19. Section 31.607 is added to read as follows:

§ 31.607 Repairs of public telephones.

This account shall include the cost of repairing the public telephone plant. (Note also account 632.)

ITEMS

(Note § 31.01–8)

Changing type of telephone, such as from one color to another or coin-operated to credit card. (See Note A.)
Cleaning public telephones.
House service for public telephones.
Inspecting, testing, and reporting on condition on equipment to determine the need for repairs or replacements. (See also account 603.)
Materials normally used as repair parts for public telephones.
Repainting and other repairs of booths, including those owned by others.
Repairing used public telephone equipment for reuse.
Replacing defective public telephone equipment (Labor only). (See Note A.)
Supply expense applicable to public telephones being reused.
Testing for locating and clearing trouble in public telephones. (See also account 603.)

Note A.—The material cost of operating spares should be charged to account 235. However installation labor and repair of this equipment should be charged to account 607.

* * * * *

20. Section 31.8 is amended by revising subsections 221 Central Office Equipment; 242:1 Aerial Cable; 242:2 Underground Cable; 242:3 Buried Cable; 242:4 Submarine Cable; 261 Furniture and Office Equipment and adding a new subsection 235 Public Telephone Equipment:

Retirement Units

§ 31.8 List of retirement units.

* * * * *

221 Central Office Equipment

Switchboards, desks and testboards:
Switchboards (i.e., local, toll, dial system "A", cordless "B", call distributing "B", observing, teletypewriter, etc.)—a complete section or lower unit.
Desks (i.e., operating, observing, testing, etc.)—a complete section.
Testboards, or test and control boards (board type)—a complete section.
Testboards, or test and control boards (rack type): All the equipment in one bay.
A complete upper unit.
A complete lower unit.
A complete installation of rack framework for one board.
Test panels—a complete panel.
Test cabinets—a cabinet complete with equipment.
Distributing frames:
Main distributing frames (including wall type)—a complete installation for one central office (in multi-unit offices, for one operating unit).
Intermediate distributing frames—a complete installation for one central office (in multi-unit offfices, for one operating unit).
Mezzanine balconies—a complete installation for one frame.
Racks:
Relay rack equipment:
A panel or unit complete with equipment.
All the equipment in one bay, exclusive of any panels or units.
Coil rack equipment—all the equipment on one shelf.
Message and traffic register rack equipment—all the equipment in one bay.
Iron framework—a complete line of rack with or without enclosing cabinet or case.
Cable:
All of the cables in one run used for the same purpose, such as between:
(1) Main frame and intermediate frame for subscribers' lines.
(2) Main frame and intermediate frame for outgoing trunk multiple.
(3) Intermediate frame and connector frame or final frame for subscribers' lines.
(4) Intermediate frame and answering jacks.
(5) Intermediate frame and switchboard for outgoing trunk multiple jacks.
(6) Intermediate frame and switchboard for multiple jacks.
Iron framework—a complete installation of rack for one cable run.
Power equipment:
Frame or rack-mounted equipment:
A panel or shelf complete with equipment, such as fuses, meters, control equipment, etc.

Iron framework—a complete line of frame or rack for one fuse board, one power switchboard, etc.
A generator, motor, motor-generator set, gas engine, rectifier, ringing machine, harmonic converter, pole changer, interrupter, power filter, or choke coil.
Storage batteries:
A complete battery with or without rack,. cabinet, or counter electric motive force cells.
All positive or all negative plates in an entire battery, i.e., in all cells of a 24 volt battery, in all cells of a morse battery, etc.
All tanks or all jars of an entire battery.
A complete battery rack or cabinet, storage or dry.
A complete group of bus bars, cable, or wiring (with or without conduit) such as between battery and fuse panel, or between power switchboard and machines.
Telephone repeater equipment (including testing equipment):
A complete floor mounted rack type set.
Relay rack mounted equipment:
A panel or unit complete with equipment.
All the equipment in one bay, exclusive of any panels or units.
Coil rack mounted equipment—all the equipment on one shelf.
Iron framework—a complete line of rack.
Carrier equipment (telephone, telegraph, repeater, and testing equipment):
A complete floor mounted rack type set.
Relay rack mounted equipment:
A panel or unit complete with equipment.
All the equipment in one bay, exclusive of any panels or units.
A line filter.
A complete test table.
Iron framework—a complete line of rack.
Telegraph equipment (printer and manual):
Telegraph testboard—a complete section or bay.
Duplex, single line telegraph, and polar repeaters—a table or bay complete with equipment.
Metallic telegraph repeaters:
A complete floor mounted rack type set.
A panel or unit complete with equipment.
Voice frequency carrier equipment—a panel or unit complete with equipment.
Voice frequency carrier battery supply apparatus:
A complete bay of equipment.
A complete test table. Iron framework—a complete line of rack.
Telephotograph equipment:
Table-mounted sending or receiving equipment:
A table complete with equipment.
A complete optical system.
A complete mechanical system.
A complete fork box.
A complete amplifier-modulator box.
Rack-mounted sending or receiving equipment:
A panel complete with equipment.
All the equipment in one bay.
Iron framework—a complete line of rack.
Power equipment:
Acomplete power board.
A complete storage battery.
Photographic equipment:
A copying camera or a copying, enlarging, and reducing camera; each with or without associated stands, illuminators, and copy boards.
A print machine.
A drying cabinet.
A developing, fixing, and wishing tank.
Radio equipment—a complete transmitter and receiver.
Miscellaneous equipment:
A calculagraph, a master clock, or a secondary clock.
Electrically driven calculagraph and clock systems—a complete installation.
Mechanical or pneumatic tube ticket distributing system— a complete installation.
Each complete tool or portable test set the original cost of which was charged to the telephone plant account, such as a plug remover and attacher, cam aligning fixture, multiple bank resetting gage, or shaft straightening tool, relay adjusting set, line-finder set, or wagon-type set.
Each complete item of furniture or other miscellaneous equipment, the original cost of which was charged to the telephone plant account, such as a desk or table equipped with central office equipment, an operator's chair, a complete switchboard platform, an operator's telephone set cabinet, a rotary file or directory cabinet, a ticket cabinet or rack, a tarpaulin with or without cabinet, a portable service-observing cabinet, or a holding-time recorder.
Loud speaker equipment—a complete installation.
Aisle-lighting equipment—a complete installation on one floor.
Rolling ladders—a complete installation for one side of one frame or rack.
Message and traffic register cabinets—a cabinet complete with equipment.
Telephone sets—a complete item.
Facsimile sets—a complete item.
Teletypewriter sets—a complete item.
Panel dial system equipment:
A complete equipment frame such as line-finder frame, line-switch frame, selector frame, link frame, routine test frame, decode frame, sender frame, or floor alarm board.
Pulse-machine equipment—a complete pulse machine.
Pulse-machine control apparatus—a complete installation controlling a set of pulse machines.
Step-by-step dial system equipment—a complete equipment frame, such as a line-finder frame, line-switch frame, selector frame, connector frame, or repeater frame.
Key-indicator equipment or key-pulsing equipment—a complete equipment frame, such as a link or sender frame.

Note:—When a substantial expenditure is incurred in the replacement of minor items that are parts of retirement units in a central office or at a large private branch exchange (apart from the replacement of the retirement units with which their cost is associated) for the purpose of improving or changing the type of equipment or its methods of operation, the material installed and retired and the labor and incidental costs involved in replacing the minor items shall be handled through the tlelphone plant and depreciation reserve accounts

* * * * *

235 Public Telephone Equipment

Housing—a complete installation with or without booth, directory hangers and shelves, shield and public telephone sign.
Pedestal—a complete installation with or without a base plate.
Shelf in proxomity to public telephone—a complete installation with or without directory hangers.
Telphone set—a complete item.
242:1 Aerial Cable; 242:2 Underground Cable;
242:3 Buried Cable: 242:4 Submarine Cable.
Two continuous spans or more of cable, with or without associated distribution terminals suspension strand, clamps, lashing, etc. (The term "span" shall include a length of cable from a Y splice not located at a pole or building.)
A section or run of cable, with or without associated elements and parts, as follows:
(1) Between a manhole, handhole, or service box and a pole, building,

fence, wall, or the junction with intrabuilding network cable.
(2) Between manholes, handholes, or service boxes; or between an office cable vault and an office manhole.
(3) Between a cable vault or an office manhole and the main frame, the main frame terminating cables, or the frame mounted connector stub.
(4) A section of buried cable 300 feet or more in length, or any section of buried cable between manholes, splicing boxes, pedestals, or buildings.
(5) All of a continuous run of one size of intrabuilding network cable. ("All of a continuous run of size" means a section between splices other than straight splices.)
(6) All of a continuous run of one size of block cable, i.e., cable attached to buildings, walls or fences. ("All of a continuous run of one size" means a section between splices other than straight splices.)
(7) All of a submarine cable for one crossing; or a section of submarine cable of 300 feet or more in length.
(8) A section of underground dip cable between poles and/or buildings, or the appropriate units listed above.

Any length of cable connected with but not a part of any unit on this list when replaced concurrently with the unit.
Terminating cables: all the cables and forms used for terminating one cable.
A complete cross-connecting cable terminal protected or unprotected, with or without associated balcony, pole seat, etc.
A pressure contactor terminal, with or without contactor.
A complete intrabuilding network cable terminal, protected or unprotected, including frame type.
A complete video terminal.
A complete coaxial terminal.
A submarine cable hut or house.
A submarine cable anchorage.
A submarine cable terminating frame.
A case of equipment, such as loading coils, building—out capacitors, carrier line filters, or auto-transformers.
An air dryer.

* * * * *

261 Furniture And Office Equipment

Each complete item of furniture or equipment, the original cost of which was charged to the telephone plant account, such as a desk, chair, table, piano, davenport, typewriter, computing machine, telephone set, teletypewriter set, facsimile set, radio equipment, key systems, large or small private branch exchanges; a section of bookcase, filing cabinet, shelving, bins, or counter; a rug, a carpet, or other floor covering for one room.

Note.— Units for large private branch exchanges are specified under subsection 221 Central office equipment of this section.

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47 CFR Parts 34 and 35

[CC Docket No. 82-678; FCC 82-423]

Amendment of the Commission's Rules and Conforming Amendments to Annual Financial Reports Form O and Form R With Respect to Accounting for Customer-Premises Equipment After Detariffing

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has instituted a Notice of Proposed Rulemaking for the purposes of amending Parts 34 and 35 its Rules and Regulations regarding the accounting for customer-premises equipment (CPE) after detariffing. These changes are designed to keep separate those revenues and costs associated with the carrier's regulated activities from those revenues and costs associated with the carrier's nonregulated activities. This Notice will also consider changes to Annual Report Forms O and R, resulting from amending Parts 34 and 35. The purpose of this notice of Proposed Rulemaking is to propose implementation of the Commission's decision that nonregulated activities shall be accounted for in separate books. Use of separate books for accounts for nonregulated activities should ameliorate the Commission's concern about the potential for a carriers nonregulated activities placing a burden on its regulated activity.

DATES:

Comments are due on or before November 8, 1982.

Reply comments are due on or before November 23, 1982.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 34

Communications common carriers, Radiotelegraph, Uniform system of accounts.

47 CFR Part 35

Communications common carriers, ocean-cable, Uniform system of accounts, Wire-telegraph.

Adopted September 23, 1982.
Released: October 1, 1982.

In the matter of amendment of Part 34, Uniform System of Accounts for Radiotelegraph Carriers, and Part 35, Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers of the Commission's Rules and Regulations and conforming amendments to annual financial reports Form O for Wire-Telegraph and Ocean-Cable Carriers and Form R for Radiotelegraph Carriers with respect to accounting for customer-premises equipment after detariffing, CC Docket No. 82-678.

Introduction

1. This Notice initiates a rulemaking proceeding to revise the Accounting rules contained in Part 34, "Uniform System of Accounts for Radiotelegraph Carriers," [1] 47 CFR 34.01, and Part 35, "Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers," [2] 47 CFR 35.01. These accounting changes are being proposed to implement the Commission's decision under both the *Second Computer Inquiry (Computer II)* [3] in Docket 20828 and the *Interface of International Telex Service with Domestic Telex and TWX Service* in Docket 21005, 86 FCC 2d 411 (1981), that nonregulated activities will be accounted for in separate books of account. We are also proposing to make conforming amendments to affected schedules of Form O (annual report for wire-telegraph and ocean-cable carriers) and Form R (annual report for radiotelegraph carriers) to add or delete accounts resulting from the changes in Parts 34 and 35.

Background

2. Under *Computer II*, we examined the competitive and technological evolution of customer-premises equipment (CPE) with a view toward determining whether the continuation of traditional regulation of terminal equipment was in the public interest. In our *Final Decision*, we concluded that "regulation of CPE under Title II is not required and is no longer warranted." 77 FCC 2d at 388. As ultimately reconsidered, this Commission required

[1] Includes ITT World Communications Inc. (ITT), RCA Global Communications, Inc. (RCA), United States Liberia Radio Corporation (U.S. Liberia), and TRT Telecommunications Corporation (TRT).

[2] Includes FTC Communications, Inc. (FTC), Western Union International Caribbean, Inc., Western Union International, Inc. (WUI) and Western Union Telegraph Company (WU).

[3] 77 FCC 2d 384, *on reconsideration*, 84 FCC 2d 50 (1980), *on further reconsideration*, 88 FCC 2d 512 (1981), *review pending sub nom. Computer and Communications Industry Assn. v. FCC*, Nos. 80-1471 *et al.* (D.C. Cir., filed May 5, 1980).

that all new carrier-provided customer-premises equipment shall be detariffed and removed from the jurisdictional separations process and the rate base of all carriers no later than January 1, 1983, with an option which allowed carriers to move the date forward, if they obtained the necessary regulatory consent. New CPE constitutes all CPE offered to consumers after January 1, 1983, that has not been previously included in the carriers' rate base or the separations process.

3. The Commission did not detariff embedded CPE under *Computer II*. Embedded CPE is that equipment or inventory which is tariffed or otherwise subject to the jurisdictional separations process as of January 1, 1983. It was not detariffed at that time because the Commission decided that additional consideration was needed to determine how the detariffing should be accomplished, and what valuation should be assigned to it. These questions are being addressed in our *Notice of Inquiry* in CC Docket No. 81-893, 89 FCC 2d 694 (1982).

4. The detariffing requirements for telex terminal equipment provided by the international record carriers (IRCs) were addressed separately in Docket 21005. *See Computer II Reconsideration, supra*, 84 FCC 2d at 77. In our decision we noted that the IRCs tariff their terminal equipment exclusively at the federal level, permitting its detariffing without raising separations issues. Therefore, we concluded that the detariffing of all telex equipment provided by the IRCs would be in the public interest and ordered the IRCs to detariff all their telex terminal equipment (new and embedded) on or before March 1, 1982.

5. Docket 21005 refers only to carrier-provided equipment used by the IRCs in their provision of telex service, including ancillary components, as accounted for in the accounts established by §§ 34.41 and 35.51 of the rules, 47 CFR 34.41 and 35.51. All new nontelex CPE is covered under *Computer II*, and all embedded nontelex CPE is being addressed in Docket 81-893.

Discussion

6. As stated previously, the purpose of this Notice is to propose implementation of the Commission's decision that nonregulated activities shall be accounted for in separate books. The Commission decided in favor of separate books of account for nonregulated activities to ameliorate its concern about the potential for a carrier's nonregulated activity placing a burden on its regulated activity. With that as the primary purpose, the proposals outlined in this Notice have the following objectives:

(1) To assure data are available for regulatory purposes that are not distorted by nonregulated activities;

(2) To establish specific accounts in the regulated accounting system (Parts 34 and 35) to identify account balances associated with nonregulated activities;

(3) To allow maximum latitude for carriers in establishing their own accounting systems for nonregulated activities;

(4) To identify the accounts affected by deregulation and provide appropriate instructions for transfer of amounts from the Commission's prescribed account in Parts 34 and 35 to the accounts of the nonregulated activities;

(5) To provide for recording transactions which are joint in nature and any necessary allocations between the regulated entity and its nonregulated activities; and

(6) To monitor the scope of the nonregulated activities and any potential for adverse impacts on regulated services that may occur.

In this Notice we are seeking comment on whether our proposed revisions to Parts 34 and 35 and separate books of account will adequately meet these objectives.

7. The *Final Decision* of Computer II states that "* * * nonseparated carriers must maintain separate books of account for their unregulated activities." 77 FCC 2d at 476. The concept that the Commission is trying to achieve is that when a separate legal entity is not established, a separate division must be established for accounting purposes. The investment in and profit of the unregulated division must be provided for in the regulated accounting system just as the investment in and profit of a subsidiary company must be provided for on the books of the parent company. In addition, accounting for transactions between the regulated entity and its nonregulated division must be provided for. Finally, the accounts established for recording the investment and profit from nonregulated operations must be separately identifiable so that the amounts can be excluded from regulatory consideration.

8. To accomplish this, we propose revising the carriers' accounting for nonregulated activities by including all investment, revenues and expenses for these activities in separate books of account. This change will group all of the carrier's nonregulated activities in separate books of account with only the net investment and net income or loss of nonregulated activities reflected, below-the-line, on the carrier's regulated books. Therefore, the following proposed revisions to Parts 34 and 35 of our accounting rules are designed to reflect the results of the carrier's nonregulated activity.

9. We propose to eliminate accounts 1610, "Miscellaneous physical property," 1615, "Allowance for depreciation; miscellaneous physical property," 5110 "Income from miscellaneous physical property," and 5115, "Income from merchandising, jobbing, and contracting". These accounts would be eliminated because the investment, revenue and expenses currently recorded in these accounts would be transferred to the carriers' books for nonregulated activity. Further, we propose to add accounts 1625, "Nonregulated investments," and 5111, "Income from nonregulated investments," to account for the carriers' nonregulated activity. Finally, the deletion of the four primary accounts and the addition of two new primary accounts would enable this Commission to identify the carriers' nonregulated activity while maintaining the integrity of the uniform system of accounts as it currently exists under Parts 34 and 35 of our Rules.

Accounting Changes

10. Under our proposed account revisions, investment in new account 1625 would include deregulated CPE that for regulated purposes was recorded in account 41, "Equipment on customers' premises," for carriers subject to Part 34 and account 51, "Equipment furnished customers," for carriers subject to Part 35. This new account would also include the depreciation reserve for deregulated CPE that for regulatory purposes was carried in account 1515, "Allowance for depreciation; radiotelegraph plant," for carriers subject to Part 34 and account 1515, "Allowance for depreciation; wire-telegraph and ocean-cable plant," for carriers subject to Part 35. In addition, this account would include investment and related reserve formerly carried in account 1610, "Miscellaneous physical property," and account 1615, "Allowance for depreciation; miscellaneous physical property." Account 1625 would also record the investment of deregulated CPE in stock that for regulatory purposes has been included in account 1795, "Material and supplies."

11. We also plan to have account 1625 be a receivable/payable account to record the nonregulated portion of expenses, including taxes, common to both the regulated and nonregulated activity, (joint cost) initially incurred by the carrier as part of their regulated

operation. The related regulated expense accounts would be credited in order that the proportionate share of nonregulated expenses can be properly included on the separate books of the nonregulated activity.

12. Account 1625 would also reflect, on a monthly basis, the net income or loss derived from the carrier's nonregulated activity. The offset to this account would be to account 5111, "Income from nonregulated investments."

13. Our Rules, 47 CFR 34.31–1(d) and 47 CFR 35.31–2(c) currently require that amounts exceeding $100 charged for each customer installation be amortized over the life of the related plant in place. At such time that CPE used in private wire service becomes detariffed, the unamortized portion of installation revenue should be transferred to account 1625, to properly reflect this revenue on the nonregulated separate books of account.

14. In addition, we propose that the carriers subdivide account 1625 in such a fashion so as to identify permanent investment, transactions settled on a current basis, and income or loss from current operations.

15. Finally, all revenues, investment and expenses which can be directly identified as nonregulatory, that is, not used in any regulatory capacity, should be initially recorded on the carrier's nonregulated separate books of account.

16. The changes in the above accounts would require several minor revisions to other Sections of Parts 34 and 35. However, unless specifically discussed in this notice, these revisions represent only additional cross-reference notes or the inclusion or exclusion of additional descriptive narrative resulting from the addition, deletion, or revision of accounts. The complete set of revisions to Parts 34 and 35, which we propose, can be seen in Appendixes A and B, respectively. We are also seeking comment on any other revisions to Parts 34 and 35 relating to accounting for nonregulated CPE that parties feel may be required.

17. We are also seeking comment on what allocation methods should be used to separate joint and/or common costs and/or expenses incurred by the regulated for the nonregulated activity. The *Cost Allocations Manual for International Communications Carriers—September 1970* (IRC Cost Manual) which was issued by the IRCs details how investment, related reserve, revenue, and expenses are allocated to communications services and geographic operating areas. Since the manual contains procedures for assigning and allocating the prescribed accounts among regulated services, it appears to be a reasonable starting point to establish procedures for allocating joint costs between regulated and nonregulated activities. While we have never adopted this manual, we request comment discussing whether the allocation principles contained in it could or should be used to determine the nonregulated portion of joint cost or whether some other method would be more appropriate. If other methods are proposed, the proposal should contain a detailed description of how the cost should be assigned, including specific allocation methods for each type of expense.

18. In our decision in Docket 21005, 86 FCC 2d 411, we did not address the value to be assigned to embedded telex terminal equipment that is removed from regulation. Because we wish to limit the scope of this docket to the accounting for terminal equipment as a nonregulated activity, we shall not seek comments on the transfer value to be assigned the embedded telex terminal equipment. We believe that we shall have sufficient opportunity to gather comments on the appropriate valuation methodology to be used for this equipment from the current or future proceedings in Docket No. 81–893. Further, §§ 34.1–7(b) and 35.1–7(b) of our rules, 47 CFR 34.1–7(b) and 35.1–7(b), currently define the accounting to be used when plant is transferred to noncarrier operations. Essentially, these sections require that plant be transferred to noncarrier operations at cost or estimated fair value whichever is lower. We believe that the rules under Sections 34.1–7 and 35.1–7 can adequately address the transfer question until we have had an opportunity to review the comments in Docket No. 81–893.

19. We recognize that the transfer of the telex terminal equipment from regulated to nonregulated accounts took place before we had an opportunity to review the comments and render a decision in Docket 81–893. Therefore when we reach a decision in that docket, a "trueing up" of the transfer value placed on telex CPE may be required, based on the valuation process established in Docket 81–893. Further, we would emphasize that the burden of justifying the transfer value is on the carrier and it must be able to provide the necessary cost support for the transfer in a precise, logical, verifiable and understandable fashion. Failure to meet this burden may constitute grounds for disallowance of such cost in an appropriate proceeding.

20. We are proposing to make these revisions effective six months after final rules are issued in this proceeding. However, we are also proposing to permit carriers voluntarily to apply these revisions retroactive to January 1, 1983.

21. In conjunction with the accounting changes to Parts 34 and 35, we propose to make conforming amendments to annual report Form O for wire-telegraph and ocean-cable carriers and Form R for radiotelegraph carriers to reflect the addition and deletion of prescribed accounts. The current schedules to be affected are 100, "Comparative Balance Sheet/Asset Side," 110, "Miscellaneous Physical Property and Allowance for Depreciation—Miscellaneous Physical Property (Accounts 1610 and 1615)," 300, "Income and Earned Surplus Statement," and 361, "Income from Miscellaneous Physical Property and Income from Merchandising, Jobbing and Contracting (Accounts 5110 and 5115)." We also seek comment on what new schedules, if any, are needed to analyze accounts 1625 and 5111.

22. In compliance with the provisions of Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we believe the above discussion sets forth the purpose of the proposed amendments. We certify that the accounting changes can be readily implemented by all carriers subject to Parts 34 and 35 without significant economic impact.

23. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever isearlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff, which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing

matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each such *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state the docket number of the proceeding to which it relates. *See generally*, Section 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

24. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

Ordering Clauses

25. Accordingly it is ordered, that pursuant to the Provisions of Sections 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), there is hereby instituted a notice of proposed rulemaking into the foregoing matters.

26. It is further ordered, that interested persons may file comments on the specific proposals discussed in this Notice on or before November 8, 1982. Reply comments shall be filed on or before November 23, 1982. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission: Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, D.C.

27. It is further ordered, pursuant to Section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. 220(i), that the Secretary shall serve a copy of this Notice on each state commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

PART 34 [Amended]

Part 34, Uniform System of Accounts for Radiotelegraph Carriers is amended as follows:

§ 34.10-99 [Amended]

1. Section 34.10-99, "Contemplated form of balance sheet," under the "Investments and funds" category shall be amended to delete accounts 1610, "Miscellaneous physical property," and 1615 "Allowance for depreciation; miscellaneous physical property;" and add account 1625, "Nonregulated investments".

§ 34.1610 [Removed]

2. Section 34.1610, "Miscellaneous physical property," is deleted.

§ 34.1615 [Removed]

3. Section 34.1615, "Allowance for depreciation; miscellaneous physical property," is deleted.

4. Section 34.1625, "Nonregulated investments," is added to read as follows:

§ 34.1625 Nonregulated investments.

(a) This account shall include all of the carrier's investment in physical property, both in service and in stock, together with related allowance for depreciation that is used or held for other than regulated communication services. It shall include the amount of all assessments for the construction of public improvements levied against nonregulated physical property.

(b) This account shall include, as a receivable, costs including taxes incurred on behalf of nonregulatory operations, and, as a payable, costs incurred by nonregulatory operations on behalf of regulated businesses.

(c) This account shall reflect net income or loss on nonregulated activity for which no compensation was received from or paid to the nonregulated operation by the regulated carrier.

5. Sections 34.1795(a) and (f), "Material and supplies," are amended to read as follows:

§ 34.1795 Material and supplies.

(a) This account shall include the cost (consideration being given to the adjustments outlined in paragraphs (b), (c), (d), and (e) of this section) of unapplied material and supplies held for use in regulated communication service (including plant supplies, unissued small tools, fuel, stationery, and other supplies) and of material and articles of the carrier in process of manufacture for supply stock.

* * * * *

(f) This account shall be subdivided as follows:

1795.01 Material held for use in the carrier's communication operations.
1795.02 Material in process of conversion.
1795.03 Undistributed supply expense.

6. Section 34.1-7(b), "Transfers of plant," is amended to read as follows:

§ 34.1-7 Transfers of plant.

* * * * *

(b) When depreciable operated plant is transferred to nonregulated operations, the transfer shall be accounted for by crediting the appropriate plant accounts and charging account 1515, "Allowance for depreciation; radiotelegraph plant," with the cost of the plant tranferred. Account 1515 shall then be credited and account 1625, "Nonregulated investments" shall be charged. (See also § 34.1625.)

7. Section 34.41-8, "Expenses of nonregulated operations," is added to read as follows:

§ 34.41-8 Expenses of nonregulated operations.

(a) Operating expenses incurred by the carrier on behalf of its nonregulated operation and initially charged to prescribed operating expense accounts shall be transferred to account 1625, "Nonregulated investments." (See § 34.1625(b).)

(b) Operating expenses incurred by the nonregulated operation of a carrier on behalf of its regulated business and initially charged to the accounts of the nonregulated operation shall be transferred to the regulated operations by debiting the prescribed operating expense accounts and crediting account 1625 "Nonregulated investments." "Other payables to affiliates; nonregulated operation payable." (See § 34.1625(b).)

§ 34.30-99 [Amended]

8. Section 34.30-99, "Contemplated form of income and earned surplus statement," under the "Ordinary Income—Noncommunications" category shall be amended to delete accounts 5110, "Income from miscellaneous physical property," and 5115, "Income from merchandising, jobbing and contracting;" and add account 5111, "Income from nonregulated investments."

§ 34.5110 [Amended]

9. Section 34.5110, "Income from miscellaneous physical property," is deleted.

§ 34.5115 [Amended]

10. Section 34.5115, "Income from merchandising, jobbing, and contracting," is deleted.

11. Section 34.5111, "Income from nonregulated investments," is added to read as follows:

§ 34.5111 Income from nonregulated investments.

(a) This account shall include the amounts received (net income) or amounts paid (loss) in connection with nonregulated operations, the investment in which is includible in account 1625, "Nonregulated investments."

(b) All revenues earned and expenses (including taxes) incurred in nonregulated operations shall be recorded on separate books of account for such operations. Only the net of the total revenues and total expenses shall be recorded in this account.

12. Section 34.5250, "Miscellaneous taxes," is amended to read as follows:

§ 34.5250 Miscellaneous taxes.

(a) This account shall include the amounts of taxes not provided for elsewhere.

(b) Amounts charged to this account prior to payment shall be credited to account 2175, "Tax accruals."

13. Section 34.6199, "Other extraordinary income credits," is amended to read as follows:

§ 34.6199 Other extraordinary income credits.

* * * * *

ITEMS

(See § 34.03–12)

Forfeitures of amounts deposited with the carrier under options for the sale or lease of property.
Profits derived from the sale of property the cost of which is includible in account 1625, "Nonregulated investments."
Profits derived from the sale of reacquired securities other than capital stock.
Profits derived from the sale of securities of other persons.
Profits from the sale of plant. (See also § 34.1–6).
Unclaimed customer's deposits.
Unclaimed wages and dividends written off.

14. Section 34.6299, "Other extraordinary income charges," is amended to read as follows:

§ 34.6299 Other extraordinary income charges.

* * * * *

Items

(See § 34.03–12)

Amounts charged to corporate income to provide for the extinguishment of amounts includible in account 81, "Organization."
Amounts charged to income in recognition of decline in value of current assets and securities owned. (See also §§ 34.10–2 and 34.10–7.)
Capital stock expense written off. (See also paragraph (e) of § 34.10–13.)
Forfeitures of amounts deposited by the carrier under options for the purchase or lease of property.
Inventory, appraisal, and other costs incident to the acquisition, sale, or lease of property when the projects are abandoned.
Long-term debt expense written off. (See also paragraph (e) of § 34.10–14.)
Losses of funds due to bank failures.
Losses on the sale of plant. (See also § 34.1–6.)
Losses resulting from the sale, destruction, or retirement of property the cost of which is includible in account 1625, "Nonregulated investments."
Losses resulting from the sale of reacquired securities other than capital stock.
Losses resulting from the sale of securities of other persons.
Penalities and fines paid on account of violations of statutes pertaining to regulation.

15. Section 34.9030(d), "Supply expense; undistributed," is amended to read as follows:

§ 34.9030 Supply expense; undistributed.

* * * * *

(d) This account shall be cleared by adding to the cost of material and supplies used in regulated activity a suitable loading charge that will equitably distribute the amounts contained herein. In those instances where such undistributed charges also relate to the cost of material and supplies used in nonregulated activity, clearances shall be made to account 1625 "Nonregulated investments," for a proportionate share.

Appendix B

PART 35 [AMENDED]

Part 35, Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers is amended as follows:

§ 35.10–99 [Amended]

1. Section 35.10–99, "Contemplated form of balance sheet," shall be amended to delete accounts 1610, "Miscellaneous physical property," and 1615, "Allowance for depreciation; misceallaneous physical property;" and add account 1625, "Nonregulated investments" under the "Investments and Funds" category.

§ 35.1610 [Removed]

2. Section 35.1610, "Miscellaneous physical property," is deleted.

§ 35.1615 [Removed]

3. Section 35.1615, "Allowance for depreciation; miscellaneous physical property," is deleted.

4. Section 35.1625, "Nonregulated investments," is added to read as follows:

§ 35.1625 Nonregulated investments.

(a) This account shall include all of the carrier's investment in physical property, both in service and in stock, together with related allowance for depreciation that is used or held for other than regulated communication services. It shall include the amount of all assessments for the construction of public improvements levied against nonregulated physical property.

(b) This account shall include, as receivable, including taxes incurred on behalf of nonregulatory operations and, as a payable, costs incurred by nonregulatory operations on behalf of regulated business.

(c) This account shall reflect net income or loss on nonregulated activity for which no compensation was received from or paid to the nonregulated operation by the regulated carrier.

5. Sections 35.1795(a) and (f), "Material and supplies," are amended to read as follows:

§ 35.1795 Material and supplies.

(a) This account shall include the cost (consideration being given to the adjustments outlined in paragraph (b), (c), (d), and (e) of this section) of unapplied material and supplies helf for use in regulated communication service (including plant supplies, unissued small tools, fuel, stationery, other supplies, and supply expense), and of material and articles of the carrier in process of conversion and manufacture for supply stock.

* * * * *

(f) This account shall be subdivided as follows:

1795:01 Material held for use in the carrier's communication operations.
1795:02 Material in process.
1795:03 Undistributed supply items. (See § 35.90–2.)

6. Section 35.1–7(b), "Transfers of plant," is amended to read as follows:

§ 35.1–7 Transfers of plant.

* * * * *

(b) When depreciable operated plant is transferred to non-regulated operations, the transfer shall be accounted for by crediting the appropriate plant accounts and charging account 1515, "Allowance for depreciation; wire-telegraph and ocean-cable plant"," with the cost of the plant transferred. Account 1515 shall then be credited and account 1625, "Nonregulated investments" shall be charged. (See also § 35.1625.)

7. Section 35.41–8, "Expenses of nonregulated operations," is added to read as follows:

§ 35.41–8 Expenses of nonregulated operations.

(a) Operating expenses incurred by the carrier on behalf of its nonregulated operation and initially charged to prescribed operating expenses accounts shall be transferred to account 1625 "nonregulated investments." (See § 35.1625(b).)

(b) Operating expenses incurred by the nonregulated operation of a carrier on behalf of its regulated business and initially charged to the acounts of the nonregulated operation shall be transferred to the regulated operations by debiting the prescribed operating expense accounts and crediting account 1625 "Nonregulated investments." (See § 35.1625(b).)

§ 35.30–99 [Amended]

8. Section 35.30–99, "Contemplated form of income and earned surplus statement," under the "Ordinary Income Non-communications" category shall be amended to delete accounts 5110, "Income from Miscellaneous physical property," and 5115, "Income from merchandising, jobbing and contracting;" and add account 5111, "Income from nonregulated investments."

§ 35.5110 [Removed]

9. Section 35.5110, "Income from miscellaneous physical property," is deleted.

§ 35.5115 [Removed]

10. Section 35.5115, "Income from merchandising, jobbing, and contracting," is deleted.

11. Section 35.5111, "Income from nonregulated investments," is added to read as follows:

§ 35.5111 Income from nonregulated investments.

(a) This account shall include the amounts received (net income) or amounts paid (loss) in connection with nonregulated operations, the investment in which is includible in account 1625, "Nonregulated investments."

(b) All revenues earned and expenses (including taxes) incurred in nonregulated operations shall be recorded on separate books of account for such operations. Only the net of the total revenues and total expenses shall be recorded in this account.

12. Section 35.5250, "Miscellaneous taxes," is amended to read as follows:

§ 35.5250 Miscellaneous taxes.

(a) This account shall include the amounts of taxes not provided for elsewhere.

(b) amounts charged to this account prior to payment shall be credited to account 2175, "Tax accruals."

13. Section 35.6110, "Extraordinary current income credits," is amended to read as follows:

§ 35.6110 Extraordinary current income credits.

* * * * *

ITEMS

(See § 35.03–12)

Current liabilities written off in accordance with the provisions of § 35.10–5(c).
Forfeitures of amounts deposited with the carrier under options for the sale or lease of property.
Profits derived from the sale of property the cost of which is includible in account 1625, "Nonregulated investments."
Profits derived from the requisition and resale of securities other than capital stock.
Profits derived from the sale of securities of other persons.
Profits derived from the sale of plant. (See also § 35.1–6(j).)

14. Section 35.6120, "Extraordinary current income charges," is amended to read as follows:

§ 35.6120 Extraordinary current income charges.

* * * * *

ITEMS

(See § 35.03–12)

Amounts charged to income to provide for the extinguishment of amounts includible in account 81, "Organization."
Amounts charged to income in recognition of the decline in value of current assets and securities owned. (See also §§ 35.10–2 and 35.10–7.)
Capital-stock expense written off. (See also § 35.10–13(b).)
Forfeitures of amounts deposited by the carrier under options for the purchase or lease of property.
Inventory, appraisal, and other costs incident to the contemplated acquisition, sale, or lease of property when the projects are abandoned.
Long-term debt expense written off. (See also § 35.10–14 (d), (e), and (f).)
Losses of funds due to bank failures.
Losses on the sale of plant. (see also § 35.1–6(j).)
Losses resulting from the sale, destruction, or retirement of property the cost of which is includible in account 1625, "Nonregulated investments."
Losses resulting from the reacquisition and resale of securities other than capital stock.
Losses resulting from the sale of securities of other persons.
Penalties and fines paid on account of violations of statutes pertaining to regulation.
Uncollectible receivables written off.

15. Section 35.9016, "Supply clearing account," is amended to read as follows:

§ 35.9016 Supply clearing account.

* * * * *

(d) This account shall be cleared by adding to the cost of material and supplies used in regulated activity a suitable loading charge that will equitably distribute the amounts contained herein. In those instances where such undistributed changes also relate to the cost of material and supplies used in nonregulated activity, clearances shall be made to account 1625, "Nonregulated investments," for a proportionate share.

[FR Doc. 82–27969 Filed 10–8–82; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 82–593; RM–3865; FCC 82–394]

Amendment of the Commission's Rules to Revise the Standards for Assignment of Frequencies In Specific MHz Bands for Co-channel Trunked Systems in Northern California

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to amend Subparts M and S of its rules and

regulations to revise the present 70-mile geographic co-channel separation for trunked private land mobile radio systems operating in the 806–821 and 851–866 MHz bands in a specified area of Northern California. The intent of the proposal is to alleviate an existing interference problem.

DATES: Interested parties may file comments on or before November 5, 1982, and reply comments on or before November 22, 1982.

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

FOR FURTHER INFORMATION CONTACT: Keith Plourd, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Industrial radio services, Land transportation radio services, Private land mobile radio systems, Public safety radio services, Radiolocation radio service, Special emergency radio service.

Adopted: August 23, 1982.

Released: August 27, 1982.

In the matter of amendment of Subparts M and S of the Commission's rules to revise the standards for assignment of frequencies in the 806–821 and 851–866 MHz bands for co-channel trunked systems in Northern California, PR Docket No. 82–593, RM–3865.

1. Before the Commission for consideration is a March 11, 1981, petition submitted by the California Trunking Interference Association (CTIA) [1] to institute rule making looking toward amendment of Subparts M and S of the rules to revise the standards for assignment of frequencies in the 806–821 and 851–866 MHz bands for co-channel trunked private land mobile radio systems located in a specified area of Northern California.[2]

Background

2. CTIA points out that a large number of 800 MHz band trunked systems have been authorized to provide trunked base station facilities to users in the Sacramento and San Joaquin Valleys (which CTIA refers to collectively as the "Central Valleys")[3] and in the San Francisco Bay area. As these radio systems are being implemented, severe co-channel interference has developed, even among stations separated by considerably more than the 70 miles prescribed by the Commission's rules. According to CTIA, this interference phenomenon results from the nature of the area's topography. Thus, CTIA contends, most of the existing 800 MHz trunked system licensees are experiencing severe co-channel interference to such an extent that their communications facilities are rendered useless.[4]

3. CTIA explains that the Central Valley of California is approximately 450 miles long. It is bounded on the west by the Central Coastal Mountain Range and on the east by the Sierra Nevada Range. According to CTIA, the primary population centers are located in the center of the Central Valley, but communications coverage over relatively large areas is required because of the agricultural economy of the area. The Valley varies in width from approximately 55 miles to nearly 80 miles. CTIA notes that radio systems have been authorized on contrapositioned mountain ranges on the east and west sides of the Valley. CTIA contends, however, that these systems, even though they meet the 70 mile co-channel separation standard prescribed in the rules, are totally incompatible due to "heterodyning" as well as "capture" types of mutual interference. The interference in the Central Valley, CTIA asserts, is due to the long distances to the radio horizon from popular antenna sites in the area and because of unusual propagation characteristics that are prevalent in the Central Valley (*e.g.*, ducting). That is why, CTIA argues, a co-channel assignment standard based upon a fixed mileage separation simply does not work in the Central Valley.

4. According to CTIA, the San Francisco Bay area is similar to the Central Valley in that it is also bounded by mountain ranges on both sides. But at the same time there is a significant difference between the Bay and the Central Valley. The Bay, unlike the Central Valley, has its center at the Bay itself, so that the population, industry and commerce are located around the edges of the Bay and on the hills at the foot of the mountain range. In the Bay area, the antenna sites have been selected to provide coverage across the Bay as well as to fill in the canyons and the dead spots. The Bay itself is 60 miles long, but the available suitable antenna sites are often more than 80 miles apart. Co-channel trunked systems operated from those sites cause mutually destructive interference even though they meet the 70-mile prescribed separation.

CTIA's Proposed Revision

5. CTIA offers four alternative revisions to the Rules, each of which, it asserts, responds to the unique topographic characteristics of the area, the location of the existing antenna sites, certain propagation anomalies experienced there, the economy of the area, and the market for trunked mobile communications. CTIA also contends that, under the revised standards it proposes, maximum spectrum efficiency would be achieved while communications service of reasonably good quality would be provided. According to CTIA, moreover, processing of applications under its proposed standards would not require more—and might require less—effort than under the present provisions.

6. CTIA proposes the following specific alternative methods of trunked channel assignment:

(a) Incorporate into the Commission's Rules, either in its entirety or by reference, a table containing all of the presently known radio communication antenna sites in Northern California. The table constitutes Appendix A. The table also inter-relates all of these sites and shows the sites on which co-channel operations would and would not be allowed. The latter are the sites on which co-channel operations would be incompatible because of the distances between them, because of line-of-sight relationships, or for other propagation reasons. It appears that only a quick reference to the table by an applicant or by the Commission would be needed to determine whether a particular trunked chanel group can be re-used at a proposed site.

(b) A channel group would be assignable when the geographic distance between the existing trunked station and the proposed

[1] The California Trunking Interference Association explains that CTIA is an unincorporated association composed mainly of persons and companies authorized to operate trunked 800 MHz band private land mobile radio systems in Northern California. The members of the association are competitors in providing Specialized Mobile Radio service to end users, and they operate (or propose to operate) trunked systems for which facilities have been pruchased from different equipment manufacturers. According to CTIA, its members have formed this *ad hoc* committee to resolve a serious co-channel interference problem.

[2] Prior to the adoption of rules in the Second Report and Order in PR Docket No. 79–191 (FCC 82–338), 47 CFR 90.365(b)(1) contained the rules which the petitioner requested be amended. It provided:

For trunked systems, the minimum separation between co-channel systems must be 112 km. (70 mi.) except that no trunked system shall be less than 168 km. (105 mi.) distant from co-channel wide area trunked systems on any of the following mountain top sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

These provisions are now contained in rule Sections 90.362 and 90.621 of Part 90, Subparts M and S, respectively.

[3] We shall use the collective term "Central Valley" herein.

[4] The Commission's staff has, however, granted applications for modification of the licenses for trunked facilities of CTIA members so as to alleviate the co-channel interference.

station is at least 90% of the sum of the distances from the antenna site of each of these stations to the horizon along their common azimuth.[5] Thus, for example, if the distance from the antenna site of the existing station to the horizon is 40 miles and the distance to the horizon from the site of the proposed station at the direction of the existing station is 60 miles, the channels assigned to the existing station would also be assignable to the proposed station if the airline distance between the antenna sites of both these stations is at least 90 miles. Under this approach, the interference between co-channel stations would be limited to areas close to and beyond the fringes of the line of sight but would preserve good quality of communications within the station's primary area of operation. In areas separated by natural shieldings, frequencies could be reassigned over relatively short distances under this alternative. For example, frequencies now assigned to trunked stations on the eastern side of the Central Coastal Mountain Range—which serve mobiles in the San Joaquin Valley—would be reassignable to stations on the western side of that mountain range with geographic separations much shorter than 70 miles.

(c) A channel group would be assigned, even though the criteria described in subparagraphs (a) or (b) above are not met, if the licensees of present stations which might be affected concur with the proposal and so indicate in writing. This might be useful where known terrain features would isolate the particular market involved in a proposal and cooperation among co-channel licensees can be secured.

(d) A channel group would be assigned to an applicant who shows by an engineering field study survey satisfactory to the Commission that the 20 dBu contour of the proposed station would not overlap the 20 dBu contour of any other co-channel station. This alternative might be useful in unusual situations where a new system can be engineered in a market but where the necessary concurrences contemplated in subparagraph (c) above cannot be obtained.[6]

7. Under the CTIA plan, the foregoing alternative frequency assignment standards would govern applications seeking authorization of trunked base stations whose antennas would be located in the State of California at sites north of 35° North Latitude and west of 118° West Longitude. While conceding that the particular interference problems which are the subject of its petition are found principally in the Central Valley and the San Francisco Bay area, CTIA believes that applying the proposed channel assignment standards in the entire Northern California area would make the proposed plan easier to apply and to administer. Under CTIA's proposal, it expects that the Table it supplies, which is Appendix A hereto and which contains all of the known antenna sites, would probably be used in most instances by the applicants. CTIA feels that the table would be the simplest for applicants to use and for the Commission to apply. Even where one of the other alternatives is used, the applicant would conduct all of the necessary studies and would certify to the Commission that its proposal would meet the criteria.

8. CTIA also recommends that the Commission impose a moratorium upon further licensing of 800 MHz trunked systems in Northern California pending rule making to revise the rules as it requests. Authorizing additional systems under the present rule standards, CTIA argues, would worsen the interference problems and would complicate future adjustments in Northern California trunked channel assigments that would be necessary. The proposed moratorium should not apply, CTIA states where applicants accept license grants in accordance with the proposed revised channel assignment standards and subject to the outcome of the rule making.

Discussion

9. In our rule making proceeding in Docket No. 18262, we allocated frequencies in the 806–821 and 851–866 MHz bands for use by conventional and trunked radio systems,[7] and stated:

> * * *We will revisit all of the system parameters as we gain knowledge from actual operating experience; and adjustments will be made as it becomes possible to do so.[8]

Since 1979 we have revisited that Docket No. 18262 decision on several occasions to revise the 800 MHz band rules in light of the experience gained through licensing and observing the operation of these facilities. All of these proceedings have had a common goal: to revise the regulations governing use of the 800MHz band in light of our experience and that of the land mobile marketplace to meet users' needs. We are, therefore, open to considering alternatives to existing approaches to the extent it can be demonstrated that they will better serve the public interest.

10. The arguments which CTIA makes in support of its petition, the fact that an exception already exists for the four very high mountain sites in Southern California and the experience of our staff in dealing with the interference complaints from Northern California trunked licensees persuade us that some rule revision is appropriate for formal consideration. We, therefore, invite comments on the various proposals delineated herein as relating to reducing and/or eliminating interference between co-channel users and the efficient use to the trunked spectrum. In so doing we specifically solicit comments on the questions of whether all of the alternatives proposed are appropriate and equally feasible, as well as whether the large area which would be affected by the proposed revisions is necessary and desirable. We are not adopting CTIA's request that we impose a moratorium on license issuance. We will however, condition future lienses in Northern California on the outcome of this proceeding.

11. We recognize, however, that CTIA's approach represents a departure from our philosophy of channel re-use which we adopted in Docket No. 18262 [9] in that it increases the separation distances involved.[10] Thus these proposals have the effect of limiting the number of systems which can exist in a given area. We welcome comments addressing the impact which this enlarged protection area would cause and evaluating the relative merits of our Docket No. 18262 approach versus what is being proposed here. We also invite comments on whether, in light of this proposal and the increased separations involved, a licensee should be limited to a single trunked system in this geographic area until it has met the established loading requirements. See, 47 CFR 90.366 and 90.631. This approach would be consistent with the objectives we had in adopting rule 47 CFR 90.371(b). We recognize that in some cases the only viable way to provide service is by means of a relatively high site, because of undesired shielding effects. But we would also like comments on whether modifications—such as moving to a lower site or the use of directional antennas—can preserve the service area as adopted in docket No. 18262. Comments which we receive in PR Docket No. 81–787, *supra*, may also be considered before the adoption of final rules in this proceeding.

12. For purposes of this non-restricted notice and comment rule making

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[5] CTIA would calculate the distance to the horizon from a particular site by using the equation $D=(2H)^{\frac{1}{2}}$ where H is the height above mean sea level and D is the distance to the horizon in miles. FCC Form 400 already requires the height above mean sea level.

[6] We note, however, that in our proceeding in Docket No. 81–781 we have proposed to substitute a 40 mile rule for the current 40 dBu rule. *Notice of Proposed Rule Making PR Docket No. 81–787*, FCC 81–528, adopted November 12, 1981, released November 27, 1981.

[7] See generally, *Land Mobile Radio Service*, Docket No. 18262, Second Report and Order, 46 FCC 2d 752 (1974); *Land Mobile Service*, Docket No. 18262, Memorandum Opinion and Order, 51 FCC 2d 945 (1975).

[8] *Land Mobile Service*, f.n. 2, 51 FCC 2d at 978–9.

[9] *Second Report and Order*, Docket No. 18262 (released May 2, 1974), 46 FCC 2d 752, paragraph 76.

[10] See proposed amendments to § 90.621(b) in Appendix B of this document.

proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who submits and oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation: on the day of oral presentation that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally. 1.1231 of the Commission's rules, 47 CFR 1.1231.

13. Accordingly, notice is hereby given of rule making to amend Part 90 of the Commission's Rules. in accordance with the proposal set forth in the Appendix.

14. It is further ordered that, pending the conclusion of the rulemaking proceeding initiated herein application grants under Part 90 of the Commission's rules for authorization of a trunked private land mobile radio facility on the frequencies 806–821 and 851–866 MHz whose base station transmitting antenna would be located in the State of California at a site north of 35° North Latitude and west of 118° West Longitude will be conditioned on the outcome of this proceeding.

15. The proposed amendment to the Rules is issued pursuant to authority contained in Sections 4(i), 303(b), 303(f), 303(g), and 303(r) of the Communications Act, as amended.

16. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rulemaking proceeding because the rule will not, if promulgated, have a significant economic impact on a substantial number of small entites since it is geographically confined to a specific portion of one state. Also the proposed change imposes no additional recordkeeping requirements. The rule changes may have a beneficial effect upon licensees in that it will enhance the ability to operate these systems in an interference-free manner.

17. Pursuant to procedures set out in § 1.415 of the Commission's rules, 47 CFR 1.415, interested persons may file comments on or before November 5, 1982, and reply comments on or before November 22, 1982. The Commission will consider all relevant and timely comments before taking final action in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas no' contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

18. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1,419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the public who wish to express their interest are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

19. For further information contact Keith Plourd, Federal Communications Commission, Private Radio Bureau, Land Mobile and Microwave Division, Washington, DC 20554, (202) 632–6497.

Federal Communications Commission.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

William J. Tricarico,

Secretary.

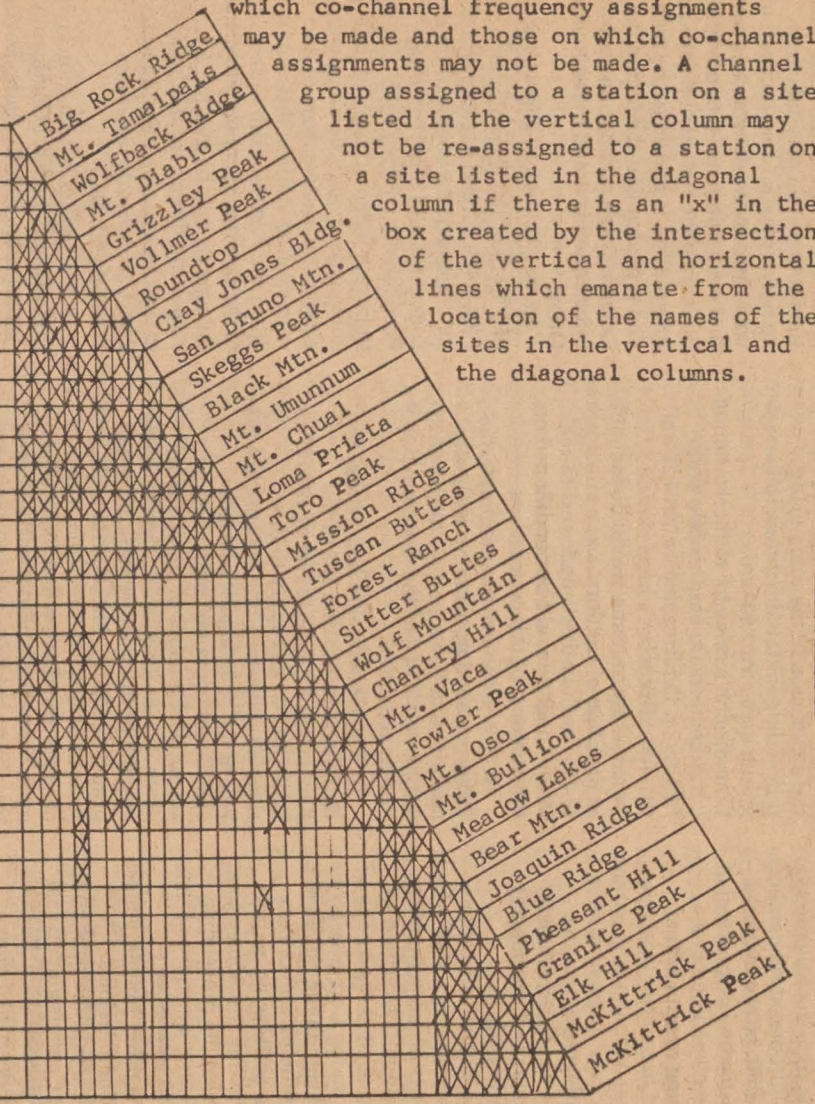
BILLING CODE 6712-01-M

APPENDIX A

TABLE 1

Antenna Sites in Northern California						
Geographic Coordinates						Site Name
North Latitude			West Longitude			
D	M	S	D	M	S	
38	03	40	122	36	17	Big Rock Ridge
37	55	44	122	35	11	Mt. Tamalpais
37	50	57	122	29	56	Wolfback Ridge
37	52	54	121	55	05	Mt. Diablo
37	51	12	122	12	30	Grizzley Peak
37	52	58	122	13	11	Vollmer Peak
37	51	00	122	11	30	Roundtop
37	43	33	122	24	52	Clay Jones Bldg.
37	41	21	122	26	08	San Bruno Mtn.
37	24	39	122	18	20	Skeggs Peak
37	19	13	122	08	33	Black Mountain
37	10	37	121	54	24	Mt. Umunnum
37	07	09	121	49	58	Mt. Chual
37	06	40	121	50	29	Loma Prieta
36	31	45	121	36	24	Toro Peak
37	29	15	121	52	03	Mission Ridge
40	15	46	122	05	37	Tuscan Buttes
39	51	50	121	41	20	Forest Ranch
39	12	17	121	49	02	Sutter Buttes
39	08	01	121	05	58	Wolf Mountain
38	52	15	121	07	39	Chantry Hill
38	24	20	122	06	30	Mt. Vaca
38	01	15	120	35	06	Fowler Peak
37	30	31	121	22	26	Mt. Oso
37	32	32	120	03	45	Mt. Bullion
37	04	10	119	25	39	Meadow Lakes
36	44	38	119	16	57	Bear Mtn.
36	18	10	120	24	03	Joaquin Ridge
36	17	07	118	50	19	Blue Ridge
35	38	29	118	47	08	Pheasant Hill
35	33	09	118	49	20	Granite Peak
35	17	17	119	30	55	Elk Hill
35	17	27	119	45	48	McKittrick Peak
35	16	51	119	44	52	McKittrick Peak

This table shows the antenna sites on which co-channel frequency assignments may be made and those on which co-channel assignments may not be made. A channel group assigned to a station on a site listed in the vertical column may not be re-assigned to a station on a site listed in the diagonal column if there is an "x" in the box created by the intersection of the vertical and horizontal lines which emanate from the location of the names of the sites in the vertical and the diagonal columns.



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Appendix B

1. PART 90 [AMENDED]

Paragraph (c) of § 90.362 would be revised to read as follows:

§ 90.362 Selection and assignment of frequencies.

* * * * *

(c) Except as provided in subparagraphs (1) and (2), the minimum separation between co-channel systems must be 112 km. (70 miles).

(1) No trunked station shall be less than 168 km (105 miles) distant from co-channel stations on any of the following mountaintop sites: Santiago Peak, Sierra Park, Mount Lukens, Mount Wilson (California).

(2) In the State of California, north of 35° North Latitude and west of 118° West Longitude, frequencies for co-channel trunked systems will be assigned in accordance with the following:

(i) If the transmitting antenna will be located in one of the antenna sites listed in Table 1, a channel group is available for assignment at the site proposed by the applicant; or

(ii) The applicant shows that the geographic distance between the proposed station and any existing co-channel station will be at least 90 percent of the sum of the distances to the horizon from each station location at the direction of the other station; or

(iii) All licensees of authorized trunked stations, with respect to which co-channel assignments to the proposed station would not meet the criteria of subdivisions (i) and (ii), have concurred in writing to the assignment of the channel group assigned to them; or

(iv) The applicant shows by an engineering field survey that the 20 dBu contour of the proposed station would not overlap the 20 dBu contour of any other authorized co-channel station.

2. New paragraph (c) would be added to § 90.364 to read as follows:

§ 90.364 Limitations on the number of frequency pairs assignable for trunked systems and on the number of trunked systems.

* * * * *

(c) In the State of California north of 35° North Latitude and west of 118° West Longitude, no more than a single trunked system will be authorized to any one licensee to provide radio facilities for use of more than a single person or entity, except where the applicant shows:

(1) That the additional trunked system will be used to provide radio facilities for a single entity, where the additional system is justified on the basis of the requirements of the proposed single user; or,

(2) That radio systems previously authorized to the applicant are being operated to at least 90 percent of their authorized capacity.

3. Paragraph (b) of § 90.621 would be revised to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Systems authorized on frequencies in the Commercial category will be afforded protection solely on the basis of mileage separation criteria. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible interference will not be taken into account. The minimum separation between co-channel systems must be 112 km. (70 Mi.) except as specified in paragraphs (a) (1) and (2) following:

(1) No trunked station shall be less than 168 km (105 miles) distant from co-channel stations on any of the following mountaintop sites: Santiago Peak, Sierra Park, Mount Lukens, Mount Wilson (California).

(2) In the State of California, north of 35° North Latitude and west of 118° West Longitude, frequencies for co-channel trunked systems will be assigned in accordance with the following:

(i) If the transmitting antenna will be located in one of the antenna sites listed in Table 1, a channel group is available for assignment at the site proposed by the applicant; or

(ii) The applicant shows that the geographic distance between the proposed station and any existing co-channel station will be at least 90 percent of the sum of the distances to the horizon from each station location at the direction of the other station; or

(iii) All licensees of authorized trunked stations, with respect to which co-channel assignments to the proposed station would not meet the criteria of subdivisions (i) and (ii), have concurred in writing to the assignment of the channel group assigned to them; or

(iv) The applicant shows by an engineering field survey that the 20 dBu contour of the proposed station would not overlap the 20 dBu contour of any other authorized co-channel station.

4. Paragraph (d) of §90.623 would be added to read as follows:

§90.623 Limitation on the number of frequencies assignable for conventional systems.

* * * * *

(d) In the State of California north of 35° North Latitude and west of 118° West Longitude, no more than a single trunked system will be authorized to any one licensee to provide radio facilities for use of more than a single person or entity, except where the applicant shows:

(1) That the additional trunked system will be used to provide radio facilities for a single entity, where the additional system is justified on the basis of the requirements of the proposed single; or,

(2) That radio systems previously authorized to the applicant are being operated to at least 90 percent of their authorized capacity.

[FR Doc. 82-27924 Filed 10-08-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. RSGC-2, Notice 3]

Display of Alerting Lights by Locomotives at Public Rail-Highway Crossings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend 49 CFR Part 229 by adding a new subpart that would require railroad locomotives to display an alerting light at public rail-highway crossings at grade. The effect of this proposal would be to help alert motorists and pedestrians of an approaching train. This action is taken by FRA in an effort to reduce the number of the accidents that occur at points where highways cross railroad tracks.

DATES: (1) Written Comments: Written comments must be received before November 19, 1982. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

(2) *Public Hearing:* A public hearing will be held at 10:00 a.m. in Washington, D.C. on November 16, 1982. Any person who desires to make an oral statement at the hearing should notify the Docket Clerk before November 10, 1982, by phone or by mail.

ADDRESSES: (1) *Written comments:* Written comments should identify the

docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Written comments will be available for examination both before and after the closing date for written comments, during regular business hours in Room 7321A of the Nassif Building at the above address.

(2) *Public Hearing:* A public hearing will be held in Room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. Persons desiring to make oral statements at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:
Steve Urman, Office of Standards and Procedures, Federal Railroad Administration, Washington, D.C. 20590. Telephone (202) 426–9178.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1979, FRA issued a NPRM (44 FR 34982) that would require railroad locomotives to display two alternatively flashing electronic flash tube (strobe) lights at public rail-highway crossing at grade. (The lights would be in addition to the standard locomotive headlight.) At public hearings held in conjuction with that notice, and in the written comments submitted to the docket, several problems with strobe lights were identified. As a result, on April 15, 1982, FRA withdrew the NPRM (47 FR 16189). The withdrawal notice indicated that the FRA would obtain additional and more current information on a variety of alerting light devices and then consider developing a new alerting light proposal. This notice proposes an alerting light requirement that encompasses a wide variety of light types. Before discussing the specific details of the new proposal, however, a general review of the rail-highway crossing problem is warranted.

The U.S. DOT—Association of American Railroads (AAR) National Rail-Highway Crossing Inventory indicates the following number of crossings at grade: 213,907 public; 139,182 private; and 3,644 pedestrian. During the 10-year period 1972 through 1981, an annual average of 1,004 fatalities and 3,868 injuries resulted from rail-highway grade crossing accidents involving collisions at public crossings between rail equipment and motor vehicles, other vehicles or machines and pedestrians.

In 1981, a total of 8,546 crossing accidents of all types at public crossings resulted in 697 fatalities and 3,121 injuries. Of the total number of accidents, 8,232 involved collisions between rail on-track equipment and motor vehicles, resulting in 623 fatalities and 3,020 injuries, to which class of accidents this proceeding primarily relates.

The 8,232 accidents between rail equipment and motor vehicles consisted of 5,845 collisions in which a train struck a motor vehicle (resulting in 466 fatalities and 1,977 injuries) and 2,387 collisions in which a motor vehicle ran into the side of a train (resulting in 157 fatalities and 1,043 injuries). Of the 8,232 collisions, 184 occurred at dawn, 4,393 occurred in daylight, 278 occurred at dusk, and 3,377 took place at night. A breakdown of the types of warning devices at the crossings where these accidents occurred indicates that 1,102 occurred at crossings with gates, 3,132 at crossings with flashing lights, wigwags or bells, and 3,998 at crossings with only passive signs or special warnings.

It should be noted that the FRA proposal contained in this notice, which would require that locomotives be equipped with alerting lights, is designed to supplement other efforts being made within DOT to reduce accidents at rail-highway crossings. In this connection, DOT has several active programs directed at eliminating hazards at rail-highway crossings. These include the installation of active and passive warning devices at rail-highway crossings, construction of grade separations, and support of measures to improve driver awareness of the hazards involved through driver education programs and effective enforcement of all traffic laws.

In addition, current FRA regulations require a headlight that produces at least 200,000 candela for each lead locomotive used in road service and a front and rear headlight that produces at least 60,000 candela for each locomotive used in yard service (49 CFR 229.125). Also required is an audible warning device that produces a minimum sound level of 96 db(A) 100 feet in front of each lead locomotive (49 CFR 229.129). These devices provide significant audible and visual alerting characteristics.

In efforts to reduce further the number of rail-highway crossing accidents, FRA has conducted research to determine means of enhancing the visibility of trains at rail-highway crossings. Several types of devices were investigated. This research is documented in the following reports which have been placed in the docket: "The Visibility and Audibility of Trains Approaching Grade Crossings," J. O. Aurelius and N. Korobow System Consultants, Inc. FRA–RP–71–2, May 1971 (NTIS No. PB–202–683); "Field Evaluation of Locomotive Conspicuity Lights," D. B. Devoe and C. N. Abernathy, Transportation Systems Center, FRA–ORD–75–54, May 1975 (NTIS No. PB–244–532); and Guidelines for Enhancement of Visual Conspicuity of Trains at Grade Crossings," John B. Hopkins and A. T. Newfell, Transportation Systems Center, FRA–ORD–71, May 1975 (NTIS No. PB–244–551). Copies of these reports may be obtained from the National Technical Information Service, Springfield, Virginia 22161.

Also available in the docket are three other reports. The "Analysis for NPRM Strobe Light on Locomotives (Docket No. RSGC–2)," May 26, 1978, was prepared by the Transportation Systems Division of Input Computer Services, Inc., Cambridge, Massachusetts. The analysis includes an examination of the effectiveness of strobe lights in preventing accidents, an estimate of the benefits, an evaluation of the costs of a regulation requiring strobe lights, and a measure of the economic impact of the earlier proposed regulation on the railroad industry. The second report, "Grade Crossing Resource Allocation for Strobe Lights and Conventional Warning Systems," is a resource allocation analysis conducted by the Transportation Systems Center, Cambridge, Massachusetts. Although these two reports were developed for the earlier NPRM on alerting lights, substantial portions of their analyses and data are still pertinent. The third report is FRA's regulatory evaluation of the rule proposed in this notice, including an estimate of the costs and benefits of the proposed action. The regulatory evaluation is summarized later in this preamble.

Section by Section Analysis

Section 229.151. This section sets forth the scope of Subpart E. The subpart prescribes the minimum requirements for the use of alerting lights on railroad locomotives. A railroad is allowed to adopt additional requirements governing their use, thus permitting it to tailor the use of alerting lights to its individual operating environment. For example, a railroad might choose to display an alerting light continuously rather than only at public rail-highway crossings.

Section 229.153. Proposed definitions necessary to the understanding and implementation of the supart are set forth in this section. Most of the definitions are simple and do not

involve any underlying substantive issues.

The proposed definition of "public crossing" has the same elements of that term as defined in the U.S. DOT-AAR National Rail-Highway Crossing Inventory. The proposed requirements of the subpart regarding the display of alerting lights would apply only at public crossings. For several reasons, private crossings would not be included. First, the overwhelming percentage of accidents occur at public crossings, where the public has a reasonable expectation of special protection.

Many private crossings are used infrequently. Second, the operational practices of a railroad are subject to agreement between the holder of a private right of crossing and the railroad involved. The parties are best suited to determine the appropriateness of displaying alerting lights and take the necessary actions at private crossings.

Section 229.155. This section sets forth the proposed requirements for the display of alerting lights. In general, the section would require that each locomotive at the front of a train or other movement display an alerting light at all public rail-highway crossings.

The phrase, "at the head of a train or other movement", clarifies two situations. First, if a locomotive is not the first piece of rolling equipment to enter a public crossing, the display of an alerting light is not required. Second, if a locomotive enters a public crossing without any rolling equipment in front, display of an alerting light is required irrespective of whether it is pulling any other equipment.

Proposed § 229.155(a) also provides that the required display begin at least 20 seconds prior to the locomotive entering any public crossing and continue until 20 seconds after the locomotive has cleared the crossing or until the entire train has cleared the crossing, whichever occurs sooner. This proposed timeframe reflects an assessment of the period when an alerting light will be effective in warning vehicles approaching the crossing of the presence of the locomotive. It should provide motorists with ample opportunity to take action to avoid an accident.

The proposed requirement to display an alerting light would become effective five years from issuance of the final rule based on the NPRM. The five year interval should enable the industry to obtain and install the lights without creating any undue burden on railroad operations. During the five year interval, however, equipped locomotives would be required to display an alerting light. (§ 229.157)

The section also includes several exceptions to the proposed requirement that a locomotive at the head of a train or other movement display an alerting light at all public crossings. The first exception (paragraph (b)) involves the enroute failure of an alerting light. When the light on the lead locomotive fails enroute, the failure is not a non-complying condition under Part 229. FRA believes the available evidence indicates alerting lights will have a high level of reliability so that enroute failures should be infrequent. FRA has concluded the potential disruption to rail operations, which would result from any restrictions on movement when a light fails enroute, far outweigh the impact of an inoperative alerting light.

The second exception (paragraph (c)) provides that a non-equipped locomotive, or a locomotive with a defective alerting light, would be permitted to operate across public crossings within an engine servicing area or train yard at a speed not exceeding 10 mph for the purpose of servicing the locomotive or assembling or disassembling multi-unit locomotive consists. The proposed exception for assembling and disassembling locomotive consists follows from the fact that only the locomotive at the head of the train or other movement is required to display an alerting light. It is possible that other locomotives in a multi-unit consist will either not be equipped with an alerting light or may have a defective light. In order to assemble or disassemble consists that include such locomotives, an exception is necessary since there may be a public crossing within the yard. Otherwise, the tagging provision of § 229.9 would apply since the failure to display an alerting light would not be the result of enroute failure of the device. Similarly, an exception is necessary to avoid the tagging provision for intra-yard movements to service or repair non-complying locomotives. These limited, low speed movements do not justify the tagging burden imposed under § 229.9.

As a result of these exceptions, the compliance burden is minimized. The critical requirement that a railroad must meet is ensuring that the alerting light is operative at the point a locomotive is dispatched for service.

FRA believes the available evidence indicates alerting lights will have a high level of reliability so that enroute failures should be infrequent. FRA has concluded the potential disruption to rail operations, which would result from any restrictions on movement when a light fails enroute, far outweigh the impact of an inoperative alerting light.

Section 229.157. The alerting light specifications are contained in this section. Paragraph (a) lists four alerting light types that are acceptable devices if installed at any time prior to one year after issuance of the final rule: electronic flash tube lights, revolving dome or rotating beacon lights, oscillating headlights, and sequential or alternating flashing headlights. Devices so installed are not subject to specific minimum performance standard requirements.

Thus, currently equipped locomotives, which comprise almost half of the locomotive fleet, will be "grandfathered" under the rule. Since the devices vary greatly in design and original installation date, it would be impractical to prescribe minimum performance standards for devices already installed on locomotives. Furthermore, the costs associated with reequipping locomotives with a new device, to achieve only a marginal or technical difference in performance, greatly outweigh any anticipated benefits. The purpose of the one year interval after issuance of the final rules is to permit the installation of devices already in stock or on order that might not otherwise be acceptable under the applicable performance standards.

The list of alerting light types in § 229.157(a) is based on FRA's knowledge of alerting light devices now being utilized. If other devices are in use and should be included in the list, FRA would welcome a description of the device and a brief summary of why the alerting qualities warrant its inclusion.

Paragraph (b) prescribes performance standards for each type of alerting light device listed in paragraph (a). The performance standards, which do not apply to devices on locomotives equipped before one year after the issuance of a final rule, are based on an analysis by the FRA of the characteristics of devices currently manufactured and available for railroad installation. The performance standards represent FRA's understanding of alerting light technology and the criteria for describing light devices in terms of operational characteristics. However, since they are intended to be descriptive of currently available devices, FRA has not analyzed the significance or function of each component of the performance standard in providing alerting qualities. Nor has the FRA attempted to determine the nature of the alerting concept in the abstract, with an eye towards developing an "ideal" light device. FRA believes that light manufacturers and railroads are better able both to determine and improve the light devices'

alerting qualities and to tailor them to the particular needs of individual railroads.

FRA solicits the input of railroads, light manufacturers, and other interested persons regarding the specific performance standards and the concept of alerting lights generally. Performance standards for other types of alerting lights will be considered if submitted in response to this notice. FRA envisions that the final rules would provide the maximum flexibility for light selection while ensuring that each light type has a high level of alerting qualities.

Section 229.159. Under this proposed section, a locomotive that is equipped with an alerting light and operated at the front of a train or other movement must display the light as specified by proposed § 229.155. This proposed requirement would become effective after 30 days from the date of issuance of the final rules based on this NPRM.

List of Subjects in 49 CFR Part 229

Railroad safety.

Regulatory Impact

This proposal has been evaluated in accordance with existing regulatory policies. This proposal does not appear to have any special or disproportionate impact on small entities, nor is tiering a practical alternative because of the limited and essential indivisible aspects of the requirement to display an alerting light. The costs of the proposed rule are relatively small and are not anticipated to adversely impact on the competitive position of small entities. However, it has not been possible to adequately quantify the extent small businesses may be adversely impacted by the proposed alerting light requirement. Hence, FRA encourages all small entities to comment on the impact of this notice. Based on the available facts, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). The proposal does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The proposal does not constitute a major rule under the terms of Executive Order 12291. However, a regulatory evaluation of the proposal has been prepared in accordance with DOT's regulatory policies and procedures.

FRA estimates that the proposed regulatory action has a benefit/cost ratio of 2.30. Requiring railroads to install and display an alerting light on each locomotive has a net present value cost (based on a 20 year forecast) of $45,632,000 (installation and maintenance costs). The net present value benefit is $104,927,000 (reduction in accidents, fatalities, injuries, and property damage). The present value cost for the first five years, the retrofit installation period and thus the highest cost years, is approximately $3,895,000, $4,471,000, $3,537,000, $3,350,000 and $3,160,000, respectively. In the sixth and each succeeding year, the annual cost is reduced to under $3,000,000.

A copy of the evaluation has been placed in the Docket. Interested persons may examine the regulatory evaluation during regular business hours in Room 7321A, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Persons interested in obtaining a copy of the analysis for review and comment should contract the Docket Clerk, Office of Chief Council, Federal Railroad Aministration, Nassif Building, at the above address.

Public Participation

Interested persons are invited to participate in this proceeding by submitting written data, views or comments. Communications should identify the regulatory docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Persons desiring receipt of their communications to be acknowledged should attach a stamped pre-addressed postcard to the first page of each communication. Communications received before November 19, 1982, will be considered before final action is taken on the proposed rule. All comments received will be available for examination by interested persons at any time during regular working hours in Room 7321A, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

In addition FRA will conduct a public hearing at 10:00 a.m. on November 16, 1982, in Room 2230, 400 Seventh Street SW., Washington, D.C. The hearing will be informal, and not a judicial or evidentiary hearing. There will be no cross examination of persons making statements. A staff member of FRA will make an opening statement outlining the matter set for hearing. Interested persons will then have the opportunity to present their oral statements.

At the completion of all initial oral statements, those persons who wish to make rebuttal statements will be given the opportunity to do so in the same order in which they make their intitial statements. Additional procedures for conducting the hearing will be announced at the hearing.

Interested persons may present oral or written statements at the hearing. All statements will be made part of the record of the hearing and will be a matter of public record. Any person who wishes to make an oral statement at the hearing should notify the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 29590 (Phone 202–426–2760), before November 10, 1982, stating the amount of time required for the initial statement.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend 49 CFR Part 229 to add a new Subpart E to read as follows:

PART 229 [AMENDED]

Subpart E—Alerting Lights

* * * * *

Sec.

229.151 Scope.
229.153 Definitions.
229.155 Alerting light display.
229.157 Alerting light specifications.
229.159 Interim utilization of equipped locomotives.

Authority: Secs. 2, 7, 8, 9, and 13, Locomotive Inspection Act (45 U.S.C. 23, 28, 29, 30 and 34); Sec. 6(e) and (f), Department of Transportation Act (49 U.S.C. 1655(e) and (f)).

Subpart E—Alerting Lights

§ 299.151 Scope.

This subpart prescribes minimum requirements governing alerting lights on locomotives. So long as these requirements are met, railroads may adopt additional requirements governing their use.

§ 299.153 Definitions.

As used in this subpart:

"Alerting light" means a device prescribed in § 299.157 that complements the headlight prescribed in § 299.125. "Effective intensity" means that intensity of a light in candela as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights, November 1964. "Flash duration" means the period during which 90 percent of the total energy within the visible range associated with the flash is emitted.

"Public crossing" means a location where one or more railroad tracks cross at grade a road open to public travel which is under the jurisdiction of, and maintained by, a public authority.

§ 299.155 Alerting light display.

(a) Except as provided in paragraphs (b) and (c) of this section, after (five years from issuance of the final rule), each locomotive at the front of a train or other movement shall display an alerting light at a minimum of 20 seconds before entering a public crossing and continuing until 20 seconds after the locomotive has cleared the crossing or until the entire train has cleared the crossing, whichever occurs sooner.

(b) Notwithstanding the requirements of paragraph (a) of this section, whenever a locomotive at the front of a train or other movement does not display an alerting light because of an enroute failure, it shall not be a non-complying condition under this part.

(c) A non-complying locomotive, or a locomotive with an inoperative alerting light, may be operated at the front of a train or other movement across a public crossing located within an engine servicing area or train yard without displaying an alerting light at a speed not exceeding 10 mph for the purpose of servicing or repairing the locomotive or assembling or disassembling locomotive consists.

§ 299.157 Alerting light specification.

(a) For a locomotive equipped before (one year from issuance of the final rule), an alerting light device is—

(1) An electronic flash tube light;

(2) A revolving dome or rotating beacon light;

(3) An oscillating headlight; or

(4) Sequentially or alternating flashing headlights.

(b) For a locomotive equipped after (one year from issuance of the final rule), an alerting light is—

(1) An electronic flash tube light that has the following characteristics:

(i) A flash rate of not less than .75, nor more than 1.5, flashes per second;

(ii) A flash duration not in excess of .1 seconds;

(iii) An angular coverage of not less than ±5 degrees in the vertical direction, and not less than ±135 degrees in the forward horizontal direction; and

(iv) An effective intensity over the entire angular coverage of between 400 and 3,000 candela;

(2) A revolving dome (or rotating beacon) light that has the following characteristics:

(i) A flash rate of not less than .75, nor more than 1.5 flashes per second;

(ii) An angular coverage of not less than ±5 degrees in the vertical direction, and not less than ±135 degrees in the forward horizontal direction, and

(iii) An intensity over the entire angular coverage of between 400 and 3,000 candela;

(3) An oscillating headlight that has the following characteristics:

(i) An oscillation rate of a least one cycle per second;

(ii) An angular coverage of at least ±10 degrees in the vertical direciton, and not less than ±10 degrees in the forward horizontal direction; and

(iii) An intensity of at least 200,000 candela; or

(4) Sequential or alternating flashing headlights that have the following characteristics:

(i) A flash rate of not less than .75, nor more than 1.5 flashes per second;

(ii) An angular coverage of not less than ±10 degrees in vertical direction, and not less than ±10 degrees in the forward horizontal direction; and

(iii) An intensity of at least 200,000 candela.

§ 229.159 Interim utilization of equipped locomotives.

After (30 days from issuance of the final rule), each locomotive that is operated at the front of a train or other movement and which is equipped with an alerting light as prescribed in this subpart shall display the light as specified by § 229.155.

Issued in Washington, D.C. on October 5, 1982.

Robert W. Blanchette,

Administrator.

[FR Doc. 82-26004 Filed 10-8-82; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

49 CFR Parts 604 and 605

[Docket Nos. 82-I and 82-J]

Charter Bus Operations and School Bus Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Urban Mass Transportation Administration (UMTA) is publishing this advance notice of proposed rulemaking (ANPRM) to propose several alternative approaches to the existing regulations concerning Charter Bus Operations and School Bus Operations. A number of issues have arisen in connection with these two regulations in the six years since they have been in effect. Due to this continuing concern, UMTA has decided to take a fresh look at these regulations, propose several alternative approaches, and seek public comment in an attempt to devise the most fair and workable solution to these issues.

DATE: Comments must be received on or before November 26, 1982.

ADDRESS: Comments must be submitted to UMTA Docket No. 82-I for Charter Bus Operations and No. 82-J for School Bus Operations, 400 7th Street, SW., Room 9228, Washington, D.C., 20590. All comments and suggestions received will be available for examination in room 9228 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. UMTA will acknowledge the receipt of comments if the commenter includes a self-addressed, stamped postcard with his/her comments.

FOR FURTHER INFORMATION CONTACT: Douglas G. Gold, Office of the Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Room 9228, Washington, D.C. 20590; Telephone (202) 426-4011.

SUPPLEMENTARY INFORMATION:

Introduction

Several provisions in the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1601 et seq.) (UMT Act) provide protections to private bus operators by restricting the charter bus operations and school bus operations of recipients of financial assistance under the UMT Act and under 23 U.S.C. 103(e)(4) and 142 (a) and (c). UMTA published regulations for these provisions in 1976.

During the six years that the regulations have been in effect, a number of questions and concerns have been raised about the regulations and UMTA's resolution of complaints under the regulations. In general, the complaints focus on the balance that UMTA attempted to strike in the regulations between minimizing the burdens placed on recipients and maximizing the protections for private operators. Some recipients contend that the burdens are too great; private operators contend that there are not adequate protections. Due to these continuing concerns, UMTA has decided to take a fresh look at the existing regulatory approach for carrying out the charter bus and school bus protections of the UMT Act. This ANPRM seeks comment on potential solutions to these issues. UMTA will evaluate all comments received on this ANPRM and plans to issue an NPRM and final rule during the first and second quarters of 1983, respectively.

Part I. Charter Bus Operations

Statutory Background

Two provisions of the UMT Act concern charter bus operations by recipients of financial assistance under the UMT Act and under 23 U.S.C. 103(e)(4) and 142 (a) and (c) (the Acts). First, section 12(c)(6) defines "mass transportation" as "transportation by bus or rail, or other conveyance, either public or privately owned, which provides to the public general or special service (*but not including school buses or charter or sightseeing service*) on a regular and continuing basis." (49 U.S.C. 1608(c)(6).) (Emphasis added.) The exclusion of school buses and charter and sightseeing service has been part of the definition of "mass transportation" since the UMT Act because law in 1964.

The Comptroller General in a 1966 opinion interpreted section 12(c)(6) to disallow the use of financial assistance under the UMT Act for the purchase of buses or other equipment for the sole purpose of providing charter service. An applicant has applied for an UMTA grant to purchase 40 buses, eight of which would solely provide charter service. The Comptroller General held that UMT Act funds could not be used to purchase buses exclusively to provide charter service, but that the "incidental" use for charter service of vehicles purchased for mass transit was permissible as long as the charter activity "does not detract from or interfere with urban mass transportation service for which the equipment is needed." Opinion of the Comp. Gen. B–160204 (Dec. 7, 1966). The opinion states that such incidental charter use contributes to the success of a recipient's transit operations by bringing in additional revenues from equipment that would otherwise stand idle, and by providing more employment to drivers and other employees.

The second provision that concerns charter bus service is section 3(f) of the UMT Act. Congress enacted section 3(f) in 1974 to protect private operators in the intercity charter bus industry from being foreclosed from this business by UMTA recipients, and operators for recipients, who use federally funded equipment. This provision requires that each recipient of Federal funds under the UMT Act of 23 U.S.C. 103(e)(4) and 142 (a) and (c) for the purchase or operation of buses must, as a condition of such assistance, enter into a charter bus agreement with the Secretary of Transportation. As part of this agreement, each recipient must agree that it will not engage in any intercity charter bus operations (i.e., charter bus operations outside of the urban area in which it provides regularly scheduled mass transportation service) except as provided in the agreement.

Section 3(f) does not prescribe the terms that the agreement must include to protect private operators. It states, however, that the terms shall be

> • • • Fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under the Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. (49 U.S.C. 1602(f).)

Congress first enacted a charter bus provision in section 164(a) of the Federal-Aid Highway Act of 1973 (Pub. L. No. 93–87), which required a recipient of financial assistance under the UMT Act and under 23 U.S.C. 103(e)(4) and 142 (a) and (c), to enter into an agreement with the Secretary that it would not operate any charter bus service outside of the area within which it provided mass transportation service in competition with private operators except as provided in the agreement. A violation of the agreement resulted in a bar of future receipt of Federal assistance under the UMT Act and the Highway Act section listed above.

In the following year, Congress in the Housing and Community Development Act of 1974 (Pub. L. No. 93–383) revised the 1973 charter bus provision and added section 3(f) to the UMT Act. The Senate Report accompanying this legislation states that because the 1973 Highway Act charter bus provision was added in conference, the affected industries and the Department of Transportation had no opportunity to comment on it. In discussing the 1973 charter bus provision, the Report notes that

> [I]t appears that its immediate consequence has been to force a prospective applicant for Federal assistance for the purchase of buses to choose between accepting the Federal assistance and continuing its existing charter service. Section 164(a) has halted grants of Federal funds for bus purchases under the UMTA program and virtually eliminated Federal-Aid Highway funds from consideration by State and local officials as a funding source for bus transit needs. S. Rep. No. 693, 93d Cong., 2d Sess. 92 (1974).

The Report states that this result is contrary to the growth of mass transportation.

The Report also recognizes the central dilemma in this matter. First, it agrees that the recipients of Federal transit assistance enjoy a competitive edge over private operators, who need protection. The Committee Report notes, however, the recipients of Federal assistance should not be prohibited from providing charter servce that the public needs. The Report concludes that requiring recipients to enter into agreements with the Secretary to spell out the extent of permissible charter activities will give the Secretary "the authority to tailor arrangements to provide equitable solutions to the problem." S. Rep. No. 693, 93d Cong., 2d 92 (1974).

Congress last amended section 3(f) in the National Mass Transportation Assistance Act of 1974 (Pub. L. No. 93–503), which for the first time provided Federal financial assistance for transit operating expenses. Section 109(b) of this Act extended section 3(f) coverage to this new category of Federal transit assistance.

Regulatory Background

UMTA published the existing charter bus regulation on April 1, 1976 (41 FR 14123) (49 CFR Part 604). UMTA amended the regulation slightly on December 29, 1976 (41 FR 56651) and simultaneously published an ANPRM (41 FR 56680). In that ANPRM, UMTA asked the public to comment on specific provisions in the rule and to provide suggestions on how to make the rule more effective. In addition, UMTA announced that a public hearing would be held on January 25, 1977. The comments received on the ANPRM and at the public hearing formed the basis for the subsequent ANPRM, discussed below, that UMTA issued in 1981.

The charter bus regulation distinguishes between two types of charter service: intracity and intercity. Recipients are not prohibited from either type of charter service so long as the service is done on an incidental basis. This provision, based on the Comptroller General's opinion discussed above, specifies three uses of mass transportation buses for charter service that UMTA presumes not to be incidental. (§ 604.11.) In addition, each recipient is required to enter into an agreement with UMTA that it will not perform any charter services outside of its urban area except as provided in the agreement. (§ 604.12.) This requirement applies to all recipients whether or not they plan to offer any intercity charter service. Although a recipient can negotiate its own agreement with UMTA (§ 604.14), the regulation provides a standard agreement that contains fair and equitable arrangements to protect private operators. (§ 604.13.)

There are two key provisions in this agreement. Section 2 requires a recipient, if it provides intercity charter

service, to cover its total charter cost with charter revenues. A recipient must describe these costs in its certification of costs. Appendix B lists 79 separate costs that must be included. The second key provision in the standard agreement, section 3, prohibits a grantee from charging any rate for its charter services which has the effect of foreclosing competition by private charter operators.

If an applicant provides, or proposes to provide, intercity charter service, it must include several items in any grant application. First, it must include a statement that it has provided written notice to all private operators in the existing or proposed charter service area. Second, it must include a statement that it has published a notice in a local newspaper describing its existing or proposed charter service. Third, it must include a certification of costs and a cost allocation plan if it provides charter service. (§ 604.15.) If there are no private charter bus operators in the recipient's urban area, the recipient can make a certification in its application to that effect in lieu of incuding the above described documents. (§ 604.16.)

Although the charter bus regulation does not require an applicant to hold a specific public hearing on its proposed or existing charter operations, the regulation does permit private operators to comment on such operations at the public hearing required by section 3(d) of the UMT Act. This hearing is required of all applicants for capital assistance under the UMT Act. If comments are offered, they must be submitted, with a transcript of the hearing, to the Administrator. (§ 604.17.)

The Administrator reviews the documents submitted by the applicant, including any comment by private operators. If the Administrator finds that the applicant has complied with the regulation, the Administrator may accept the certification of costs and cost allocation plan. The applicant is then permitted to enter into a charter bus agreement with UMTA. If the Administrator finds that the applicant has not complied with the regulation, the Administrator must notify the applicant and provide 30 days to submit revised documents. (§ 604.18.)

Any interested party (complainant) may file a complaint with the Administrator alleging that a recipient has violated the terms of its charter agreement. The Administrator will review the complaint to determine if probable cause of a violation exists. (§ 604.40.) If the Administrator notifies the recipient (respondent). (§604.41.) A respondent is provided 30 days to submit evidence and the complainant is provided with an equal amount of time to rebut the respondent's evidence. (§ 604.42.) After reviewing all of the evidence, the Administrator makes a written determination regarding whether a violation has occurred and, if so, the Administrator may order an appropriate remedy. Only when the Administrator determines that there has been a continuing pattern of violation can the respondent be barred from the receipt of further Federal assistance for mass transportation. (§ 604.43.) The Administrator's decision is deemed to be a final agency action, but may be judicially reviewed pursuant to 5 U.S.C. 701–706. (§ 604.45.)

A recipient who, together with all operators for the recipient, derives $15,000 or less in annual charter bus revenues, during its most recently completed fiscal year, is exempted from the scope of the regulation. This applies both to the recipient's intracity and intercity charter operations. (§ 604.2.) Such recipients, however, must still comply with the incidental use presumptions.

On January 19, 1981, UMTA published an ANPRM for the charter bus regulation. (46 FR 5394.) The ANPRM proposed revisions to many of the regulatory provisions and sought to clarify several issues, including the responsibilities of recipients whose charter operations are limited to intracity service. In addition, the ANPRM attempted to provide more reliable protections to private operators and to reduce the paperwork burden on recipients.

UMTA received 22 comments on the ANPRM. (These comments are available for examination at UMTA, 400 7th Street, SW., Washington, D.C. 20590, in room 9228 from 8:30 a.m.–5:00 p.m., Monday through Friday.) The breakdown by category of recipient is as follows:

11—Public transit operators
5—Private bus companies
4—Trade associations representing the bus industry, both public and private
1—State DOT
1—Private citizen

In general, the comments from public operators supported easing the restrictions placed on their charter bus operations. They argued that they, as recipients of Federal assistance, should have greater freedom to provide charter service in order to make the best possible use of taxpayers' money. Private operators, on the other hand, favored tightening the regulation and one even suggested that UMTA should prohibit recipients from engaging in any charter operations. Comments on specific provisions will be discussed below in the description of the alternative approaches to the existing charter bus regulation.

Alternative Approaches

In this ANPRM, UMTA is proposing several alternative approaches to the current charter bus regulation. Although some of the proposals have been suggested in comments UMTA has received, they have never been presented to the public as a whole for review and comment. UMTA seeks comments on the overall costs and benefits, for both public and private operators and for the general public, of each alternative described below. In addition to the proposals discussed below, UMTA is interested in any suggestions from the public for different approaches. Information from both public and private operators concerning their charter bus activities would especially be useful. For example, UMTA would be interested to learn from private operators their size, revenues, how many trips and passengers they carry, the number of other private operators in their area, the amount of charter business they do intracity and intercity, etc. UMTA seeks similar information from public operators. This information is crucial to UMTA in order to assess the problems faced by public and private operators in the charter bus industry. With this information, coupled with comments on the following proposals, UMTA believes that it will be able to draft a charter bus regulation that is fair, consistent with congressional intent, and not unduly burdensome.

Existing Regulation

UMTA's first proposal is to retain the existing regulation. The standard agreement in section 604.13 of the regulation contains two provisions to protect willing and able private operators from being foreclosed by recipients. Section 2 of the agreement requires a recipient, who conducts intercity charter services, to take into account in constructing its charter rates the actual cost of providing the charter service, without regard to the source of its capital or operating funds, so that its charter revenues equal or exceed its charter costs on a system-wide basis. In order to assure that the recipient is complying, UMTA requires the recipient to prepare and submit a cost allocation plan, in which it explains how it accounts for costs between the different types of service it provides, and a certification of costs in which it lists the

actual costs it incurs. Appendix B to the regulation provides a list of the component costs that must be included.

The second provision in the standard agreement that protects private operators in section 3. It prohibits a recipient from charging any rate that has the effect of foreclosing private operators. The purpose of this provision is to provide private operators with an opportunity to complain that a specific point-to-point charter rate charged by a recipient is designed to foreclose competition.

This approach has been criticized by both public and private operators. Public operators complain that the certification of costs is an unreliable accounting exercise that creates unnecessary paperwork and othe burdens. Two commenters on the ANPRM who are part of the public transit industry stated that the certification of costs does not permit recipients to *exclude* costs that should not be part of the calculation. These commenters argued that since the purpose of the certification of costs is to ensure that a recipient's costs are consistent with a private competitor's costs, then any cost a recipient incurs because it receives Federal assistance should be deducted. The commenters included the cost of federally-required equipment and the administrative cost to comply with Federal regulations in the category of deductible costs.

Private operators, on the otherhand, argued that the list of costs in Appendix B omits at least one important factor, profit. The regulation does not require a recipient to include a factor for profit in its certification of costs when determining its overall charter rate. While most recipients are not-for-profit organizations, their operations require rolling stock (capital) and a charge for the use of this capital, private operators maintain, should be reflected in their charger rates. The capital for many recipients is derived in large part from UMTA grants and also, in many cases, from State and local subsidies, and the rates charged may not reflected the true cost of this capital to society. By disregarding capital costs that they do not have to pay, these commenters contend that recipients may be able to charge a lower rate than private operators.

UMTA would appreciate comments on all aspects of the continuation of this approach. In particular, comments are requested on the time recipients spend to prepare the cost allocation plan and certification of costs; the accounting staff and expenses associated with the preparation of these documents; and any additional costs or factors that need to be included or excluded to ensure a legitimate comparison of costs by recipients and private operators.

Irrebuttable Presumptions

The second regulatory alternative that UMTA proposes would make the existing incidental use presumptions irrebuttable. Section 604.11 of the charter bus regulation provides three rebuttable incidental use presumptions that implement the Comptroller General's 1968 opinion on charter bus. According to §604.11(b), a recipient is presumed *not* to be using its buses incidentally if it conducts weekday charters: (1) During peak morning and evening rush hours; (2) requiring buses to travel more than fifty miles beyond the recipient's urban area; or (3) requiring the use of a particular bus for more than six hours in any one day. These presumptions do not apply to a recipient's weekend charters.

As stated above, UMTA proposes in this alternative to make the presumptions irrebuttable—that is, a recipient could never conduct charter bus operations as described above in the three-part test. The result of this approach would be to limit a recipient's intercity charter activities to weekends or to times not covered by the three-part test. UMTA's experience with charter bus complaints has been that many of the complaints allege violations of the presumptions. It is our opinion that by making them irrebuttable the number of alleged violations will be greatly decreased and it will be easy to determine if, in fact, a violation has occurred.

Under this alternative, UMTA would retain the two existing key provisions in the standard charter bus agreement. That is, recipients would have to cover charter costs with charter revenues and they could not charge rates designed to foreclose private operators. Instead of requiring recipients to include a detailed cost allocation plan and certificaton of costs in applications, however, UMTA could require them to merely certify that their charter revenues cover their costs. In addition, recipients would have to certify that they were not charging rates which have the effect of foreclosing private operators. If a complaint were filed, the recipient would then have to produce evidence to prove that its certification was valid.

UMTA believes that this alternative approach minimizes the regulatory burden on recipients, makes it easy for private operators to monitor recipients' compliance, and strikes a fair balance between the need to protect private operators with the right of recipients to provide needed charter service. UMTA is interested in any comments on this proposal and would like to know whether the presumptions described above should be retained in their current form or modified and whether there are any additional incidental use presumptions that we should include.

Rate Comparability

The third alternative that UMTA is proposing is rate-comparability. This is the alternative approach to the certification of costs that UMTA proposed in the 1981 ANPRM. Under this approach, a recipient that engages in intercity charter service would be prohibited from charging rates for charter service that are lower than the lowest rate charged by the three largest private operators providing the same or similar service in the area. The requirement would have applied to a recipient's intercity and intracity charter operations if it were engaged in intercity service.

UMTA provided several reasons for proposing the rate comparability approach. First, it would be less burdensome on recipients since it would eliminate the detailed accounting exercises associated with the cost allocation plan. Second, it has a basis in legislative history. In 1973, the House Committee on Public Works and Transportation reported out H.R. 10511 which would have amended the charter bus provision in the 1973 Highway Act to give the Secretary greater flexibility in devising charter bus agreements with recipients of UMTA funds. Although the bill, as reported, was passed by Congress, President Nixon vetoed it on January 4, 1974, because it did not extend the same flexibility to those agreements with recipients of funds under 23 U.S.C. 103(e)(4) or 142 (a) and (c). The Report to accompany H.R. 10511, suggests the rate comparability test. The Report states, "A local public transportation authority might agree with the Secretary of Transportation not to offer charter service to places outside an urbanized area at rates lower than the lowest rates of private operators in the area." H.R. Rep. No. 93–553, 93rd Cong., 1st Sess. 3 (1973).

In addition, certain local areas have adopted arragements similar to the Committee's suggestion. A Colorado statute, for example, requires of public operators that "the schedule of charges for special charter service shall be equal to but not less than those charged by authorized common carriers rendering the same or similar service." Colo. Rev. Stat. 32–9–103(7)(b) (1973).

Eight commenters offered comments on the proposed rate comparability approach. A few of these commenters

offered general approval of the approach, indicating that it would be less time consuming than the current certification of costs.

Two private operators supported the approach, but suggested that recipients should be required to charge a rate equal to or greater than the highest rate charged by a private operator in the area.

Those commenters opposed to the proposed test focused on some of the practical problems involved. Several commenters asked what would be done if there were fewer than three private operators providing the same or similar service in the area. Moreover, these commenters asked how to determine which three private operators were the largest. They stated that the determination of the "largest" could be based on many factors including volume of business, number of passengers transported, annual revenues, number of employees, number of buses, or even annual mileage.

In addition, several commenters offered comments on the concept of the "same or similar" service. For rates to be comparable, the service itself must be truly comparable. In the preamble to the ANPRM, UMTA noted the difficulty of assessing comparable service. The buses UMTA recipients buy with Federal assistance are, generally, transit buses. They do not include many features designed for comfort, such as reclining seats and restroom facilities, that private charter operators offer.

Thus, it is difficult to compare service provided in these two different vehicles. UMTA stated in the preamble that to be consistent with our mission as a grant-in-aid agency, rather than a regulatory agency, we favored the use of easily applied presumptions. For example, we would presume that for trips of one hundred miles or less that a standard transit bus was the same or similar and, thus, comparable, to a bus with reclining seats.

One public operator contended that appropriate allowances should be made for different types of equipment, but offered no suggestions on how to implement its recommendation. A trade association for private bus operators stated that the differences between the service offered by recipients and private operators could be rationally and objectively measured. This commenter suggested substituting the rate charged on a "conventional intercity coach" for the rate on the "same or similar service." This approach would appear to make the rate calculation objective and help solve some of the difficulties associated with determining what the same or similar service is. UMTA seeks additional comments on this suggested approach and also on presumptions that would be appropriate in assessing comparable service.

Some commenters on the ANPRM estated that this approach was beyond UMTA's statutory authority. They pointed to section 12(d) of the UMT Act, which prohibits the Secretary from regulating the rates or fares charged by a recipient of UMT Act section 3 capital assistance. UMTA addressed this issue in the preamble to the ANPRM. It is UMTA's opinion that section 12(d) does not prohibit the rate-comparability approach. The approach is justified by section 3(f)'s direction that "fair and equitable arrangements" be in place to protect private operators and by legislative history, discussed above, which suggests that the rate-comparability approach is a fair and equitable arrangement. Further, a section 3(f) charter agreement is a "condition of assistance," 49 U.S.C. 1602(f), which requires compliance by the recipient with its undertaking "furnished in connection with the application for the grant." 49 U.S.C. 1608(d).

Although UMTA has already proposed this alternative and has received comments on it, we are including it in this ANPRM. There are difficulties under this approach, including the selection of criteria on which to base the concept of the "largest" operators in the area and what the "same or similar" service means. In addition, the Bus Regulatory Reform Act of 1982 (Pub. L. No. 97-261) makes it easier for a carrier to enter the charter market and, thus, creates a large category of potential competitors whose rates would be unknown to a recipient. In light of this, UMTA seeks comments not only on the specific aspects of the rate comparability approach, but also on whether it is still a useful alternative approach.

Passenger-Mile Ceiling

The fourth alternative that UMTA proposes would restrict a recipient's intercity charter bus activities based on passenger-miles. A recipient could engage in as much intercity charter activity as it wished in any fiscal year until its passenger-miles equalled the maximum number allowed. The maximum number of allowable passenger-miles would vary with each recipient. UMTA proposes to set this ceiling at 50 percent of the average number of intercity charter passenger-miles that a recipient has provided during its last three fiscal years. This would be a one-time calculation and would constitute a permanent ceiling. If a recipient has not conducted charter service for three years one possibility would be to require it to take the average for the time period it has been in business. If a recipient has only conducted charter service for one year, its ceiling would equal the charter passenger-miles for that one year. Similarly, a recipient who begins charter service in the future would be limited to the charter passenger-miles provided during its first year of operation. Comments are solicited on other possibilities.

Once a recipient has provided its maximum allowable intercity charter service for a fiscal year, it could not provide additional service unless it obtained the sign-off of the private charter operators who actually provide service in the area. The sign-off of the private operators would evidence their agreement that the recipient's additional operations would not foreclose their own intercity charter business. UMTA specifically requests comments on the percentage of private charter operators who must sign-off, that is whether the regulation should require 100 percent of the private operators to sign-off or whether a required sign-off by a smaller percent, such as 66 or 75, would be more appropriate.

The sign-off process could involve a required public hearing or notice sent to each private charter operator. In either case, the recipient would have to provide an estimate of the number of additional passenger-miles it was proposing to provide during the rest of that fiscal year. Once the sign-offs were obtained, the recipient would certify to UMTA the additional passenger-miles for which it had local approval. If a recipient reached this increased ceiling, it could again seek the sign-off of the local private charter operators for additional passenger-miles. A certification to UMTA would be required for each increase.

This approach represents a marked difference from the existing charter bus regulation and the alternatives discussed above. This alternative is based on the concept of volume of business, not the rates charged for that business. Although a close monitoring of the rates a recipient charges that the recipient is not foreclosing private operators, it is UMTA's opinion that the volume of business a recipient provides is an equally effective means of preventing overall foreclosure. It may not, however, be as effective at preventing foreclosure on specific routes. We would appreciate comments from the public on this approach in general and on any suggestions for other

non-rate related alternatives. Comments are also requested on the specific aspects of this alternative, especially on the proposed 50 percent ceiling on passenger-miles and the percentage of private charter operators who must sign-off on a recipient's increased passenger-miles.

Other Alternatives

The four alternatives that UMTA proposes above do not exhaust the range of approaches to a charter bus regulation. For example, another alternative could include prohibiting a recipient from doing any direct intercity charter service, but allowing it to lease its equipment to private charter operators. Second, UMTA could delete the charter bus regulation and enter into an individual agreement with each recipient. Third, we could propose various amendments to the UMT Act to repeal the charter bus restrictions, to strengthen them, or to modify them to embody the desired administrative approach. UMTA solicits the public's comments on these approaches and is especially interested in receiving suggestions on other alternative approaches and on what the least burdensome regulatory approach might be.

Collateral Issues

UMTA believes that there are several related, or collateral, issues that it would be helpful to have the public address in its comments. These issues concern aspects of the charter bus regulation that could be incorporated into any of the alternatives discussed above.

Revenue Exception

Section 604.2 of the existing charter bus regulation excludes from the scope of the regulation any recipient who, together with all operators for the recipient, earns $15,000 or less in charter revenues during its most recently completed fiscal year. This provision was added to the final rule in 1976 based on UMTA's opinion that $15,000 in charter revenues is an insignificant amount and any recipient earning that amount or less would not be foreclosing willing and able private operators in the area. The ANPRM provided for this same exception, but amended it to make it clear that the annual revenues were not only those derived by the recipient, but included those derived by any operator for the recipient.

Many comments offered suggestions on this provision. Five public operators favored this exception, but argued that it should be raised for several reasons. Several stated that the limit should be raised to $50,000 or $100,000 in order to account for the general inflation that has occurred between 1976 and the present. Commenters who identified themselves as small public operators favored raising the ceiling to shield them from the burden of complying with the burdensome charter bus regulation. The one private operator who commented on this provision opposed it, stating that it permits recipeints to charge unrealistically low fares without any consequence. The commenter suggested deleting the revenue exception and requiring all recipients, not just those who operate intercity charters, to cover their charter costs with charter revenues. UMTA seeks additional comments on whether a revenue exception should be retained and, if so, whether the dollar amount should be raised.

Urban area

The definition of "urban area" serves a critical triggering function under section 3(f). Once a recipient engages in charter operations outside the "urban area within which it provides regularly scheduled mass transportation service" its charter operations become subject to agreed upon "arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under [the] Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry." 49 U.S.C. 1602(f). So long as a recipient keeps its charter bus operations within its "urban area" it need not comply with the "fair and equitable arrangements" for the protection of private operators imposed by its section 3(f) agreement with UMTA, although it must comply with incidental use presumptions pursuant to UMTA's and the Comptroller General's interpretations of the definition of mass transportation in section 12(c)(6) of the UMT Act. Currently, the charter regulation makes all of a recipient's charter bus operations, both within and beyond its urban area, subject to the arrangements of a recipient's section 3(f) agreement when a recipient engages in charter bus operations outside its urban area.

The definition of "urban area" for purposes of the UMT Act is left to the Secretary's discretion. Under the UMT Act, the term "urban area" means any area "which is appropriate, in the judgment of the Secretary, for a public transportation system to serve commuters or others in the locality * * *" 49 U.S.C. 1608(c)(10).

The definition of "urban area" in the charter bus regulation consists of three parts: (1) The area in which a recipient is authorized by local, State, or Federal law to provide regularly schedule mass transportation service; (2) the "urbanized area" as defined by the Bureau of Census; and (3) other areas as determined by the Secretary pursuant to section 12(c)(10)) of the UMT Act. This definition is broader than the "urban area" referred to in the charter bus section of the UMT Act, which refers to the area "within which [the operator] *provides* regularly scheduled mass transportation service." (Emphasis added.)

The regulation's definition of "urban area" has been the focus of many of the charter bus complaints filed with UMTA. Various State statutes permit public bus operators to provide service anywhere within the State. Recipients in these States argue that the entire State is their "urban area" since they are authorized to provide service there. Consequently, these recipients contend that the intercity charter restrictions in the regulation do not apply to them.

In the ANPRM, UMTA proposed minor revisions to the definition of "urban area." Proposed § 604.3(i) retained the same three part definition currently in effect, but would have clarified the Secretary's statutory discretion to add or subtract from what would otherwise have been the "urban area."

Eight commenters provided comments on the proposed definition of "urban area." In general, the commenters were critical of the proposed definition. Several discussed the problem that results from the "authorized" language in the definition and gave examples of States where a recipient can claim that the entire State is its urban area. Three commenters suggested that UMTA revise the definition to make it follow the statutory language which restricts a recipient's urban area to the area in which it provides regularly scheduled mass transportation service. Some commenters urged UMTA to require recipients to submit a complete definition of its "urban area" so it would be easy for UMTA to determine if that recipient were violating the intercity charter restrictions. One private operator suggested that UMTA redefine" urban area" to be the boundaries of a recipient's routes.

One large public transit operator commented that revising the definition of "urban area" to coincide with its actual service area would be too narrow. That operator indicated that it has several subsidiaries who provide service in only part of its overall service area. These subsidiaries, according to

the commenter, would be precluded from providing charter service in the remainder of the recipient's service area. The commenter, therefore, suggested that the definition should be modified to permit an operator to provide charter service to areas that are "logical extensions" of the service area. The commenter's definition would permit the subsidiaries to operate charter service in the recipient's entire service area.

Since the regulation's expansive definition has led to a number of complaints, UMTA proposes to redefine "urban area" for all of the above described alternatives. This proposal would limit a recipient's urban area to "the area within which it can reasonably be assumed that a recipient can provide mass transportation service, in morning and evening peak periods, to and from a central city." This proposed definition is based on a recent UMTA charter bus decision. In that decision, UMTA stated that the fact that State law may authorize a recipient to provide service on a statewide basis does not preclude UMTA from limiting its definition of the urban area for the recipient for Federal purposes to the area in which it is reasonable for the recipient to provide regularly scheduled mass transportation service. The result in this situation, without the submission of additional evidence by the recipient, was to limit the recipient's urban area to the territorial limits of the counties in which it presently provides service.

It is UMTA's opinion that this proposed definition is consistent with the statutory language inspection 3(f). In addition, UMTA believes that it would provide both recipients and private operators with an area that is fairly easy to define physically. UMTA is interested in receiving comments on this proposal and would be especially interested in learning whether it represents a workable solution to the problems caused by the current definition.

Spare Ratio

At this time, UMTA does not have a regulatory restriction on the number of spare buses that a recipient can have. Although UMTA carefully reviews each bus purchase grant to ensure that the vehicles are needed, each grant is reviewed on a case-by-case basis. Among the many factors that UMTA considers before approving the acquisition of additional buses when the replaced buses will not be disposed of are the size of the recipient's fleet, the age of the fleet, the amount of service the recipient provides, and possible justifications for the spare buses.

Private operators have complained that UMTA permits recipients to have too many spare buses. Although these buses serve legitimate purposes, such as responding to emergencies or replacing regular transit buses being repaired, private operators argue that recipients can develop large reserve fleets, use them for charter service, and, thus, can provide charter service anytime without interfering with their regularly scheduled mass transportation service.

UMTA believes that the number of spare buses a recipient has should be based on overall transit concerns and should not be limited solely on the basis of charter bus considerations. Nevertheless, for charter bus purposes it may be reasonale to deem a fixed percentage of a recipient's active fleet as the number of spare buses that a recipient could use for charter purposes. Any spare buses a recipient had in excess of this fixed number could not be used for charter purposes. UMTA seeks comments on the reasonableness of this approach and on the number of buses that public and private operators deem the number of spare buses a recipient should be able to use for charter operations.

Complaint Process

The complaint process proposed in the ANPRM is essentially the same as in the current charter bus regulation. Briefly, the existing complaint process relies on private operators to monitor recipients' compliance with the charter bus regulation and to file complaints with UMTA's Administrator if alleged violations are suspected. The Administrator reviews all complaints, notifies the parties involved, and accepts evidence from both the complainant and respondent to support their case and to rebut the evidence presented by the opposing party. If deemed necessary, the Administrator can arrange a hearing to gather additional evidence. The Administrator reviews all the evidence, makes a written decision and imposes an appropriate penalty. For a continuing pattern of violations, the Administrator can bar a recipient from the future receipt of Federal assistance for mass transportation facilities and equipment. The Administrator's decision constitutes final agency action and judicial review must be made according to 5 U.S.C. 701–706.

Several commenters offered comments on the complaint process. Two commenters stated that, in general, UMTA can never be an unbiased judge in a charter bus complaint since it provides financial assistance to the respondent. Consequently, these commenters suggested that UMTA should not act as the judge in complaints. Two commenters stated that the complaint process is backwards since it relies on the private operators, the protected parties, to police the activities of recipients. According to these commenters, UMTA should more actively enforce the statutory and regulatory prohibtion. One commenter added that if the private operators have the responsibility to monitor recipients' activities, then they should not have to pay attorney's fees for filing a complaint.

One commenter expressed general dissatisfaction with the amount of time UMTA uses to resolve complaints. The commenter suggested that the regulation should require UMTA to render decisions within 60 days after the parties submit evidence. This same commenter suggested that UMTA standardize the penalties it imposes and vary them in accordance with the seriousness of the violation.

In response to these and other complaints, UMTA is considering several changes to the complaint process. First, we would propose to require that the private operator attempt to settle its dispute with the recipient at the local level before filing a formal complaint with UMTA. Local conciliation could be handled informally or UMTA could require recipients to develop local conciliation processes.

One successful local conciliation process is used by the New York State Department of Transportation in connection with another UMT Act provision. The New York DOT uses State Administrative Law Judges (ALJ) to resolve any disputes between private operators and nonprofit organizations applying for funds under UMTA's section 16(b)(2) complaints. Under this program, nonprofit organizations can receive UMTA funds to provide transportation to elderly and handicapped persons only if existing transportation services in the area are, "unavailable, insufficient, or inappropriate." If an existing private operator disagrees with the determination that existing service meets the statutory requirement, it can file a complaint and have the State ALJ resolve the dispute.

UMTA is interested in learning if other States or localities provide a similar formal dispute resolution process, and whether this process could be used for charter bus purposes. If such processes are widely available, through the State or local public utility commissions or other agencies, it might be appropriate to require this type of local, formal process after the parties fail to resolve the complaint informally,

but before a complaint is filed with UMTA.

Second, UMTA is considering the use of a neutral, third party to act as a fact finder and, possibly, to recommend resolution of complaints filed with UMTA. It is important to note, however, that this third party could not actually decide the case and impose a penalty. Section 3(f) states, "upon receiving a complaint regarding an alleged violation, the Secretary shall investigate and shall determine whether a violation has occurred." Although the Secretary has delegated this duty to the UMTA Administrator in 49 CFR 1.51, it is UMTA's opinion that this duty cannot be delegated outside of UMTA. Consequently, any findings or determinations by the third party could only be proposed and would have to be reviewed and approved or modified by the Administrator.

UMTA has considered using Federal Administrative Law Judges (ALJ) as the neutral, third parties. However, the Office of Personnel Management (OPM), which assigns Federal ALJs, has informed UMTA that since section 3(f) does not require the Secretary to make a determination on the record, after an opportunity for a hearing, OPM is unable to assign ALJs to UMTA to resolve charter bus complaints. Nevertheless, OPM could assist UMTA in contracting with retired Federal ALJs to serve in the desired capacity. UMTA seeks comment on this approach for resolving charter bus complaints and welcomes any suggestions on any other process that would be appropriate.

No matter what process UMTA uses to resolve complaints, deadlines could be imposed on all parties to ensure an expeditious resolution. For example, if a complainant is required first to attempt to resolve its complaint locally with the recipient, it may be appropriate to limit this process to prevent unnecessary delays. UMTA could, for example, require 30 days for local conciliation before permitting a complainant to raise its complaint to the next level. Similarly, UMTA could impose a deadline on itself of 60, 90, or 120 days from the date a complaint is filed to render a decision. Although some provision would have to be included to allow for extensions, as necessary, such a deadline would help ensure prompt resolutions of complaints. UMTA seeks comments on this and all aspects of the complaint process.

Part II: School Bus Operations

Statutory Background

Two provisions of the UMT Act concern school bus activities by recipients. The first is section 12(c)(6) which defines "mass transportation." As discussed above in Part I, the UMT Act defines "mass transportation" to exclude school bus operations. Thus, recipients are prohibited from using federally assisted equipment or facilities bought for mass transportation service for school bus operations.

The Comptroller General's opinion, discussed in Part I, does not mention school bus operations. It is limited to charter bus and permits the incidental use of buses purchased with Federal assistance for charter activities. While it might seem consistent to permit recipients to engage in incidental school bus operations, UMTA has not. The basic idea of "incidental use" is that it does not interfere with a recipient's mass transportation service. Consequently, UMTA presumes that charter service during a recipient's peak hours is not incidental. UMTA has not permitted the incidental use of federally assisted buses for school bus activities since such activities to take students to and from school are usually conducted during the morning and late afternoon, times which coincide with peak hours. Thus, UMTA stated in the preamble to the school bus final rule that school bus operations and incidental use are mutually exclusive. (41 FR 14128; April 1, 1976.) This position was cited and upheld by the United States Court of Appeals for the 7th Circuit in *Chicago Transit Authority* v. *Adams*. 607 F.2d 1284 (7th Cir., 1979).

The second provision in the UMT Act that concerns school bus operations is section 3(g). This provision prohibits UMTA from giving UMTA funds for the construction (including purchase of buses) or operation of facilities and equipment for mass transportation service unless the applicant enters into an agreement with the Secretary not to engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.

Section 3(g), however, provides three exceptions to this prohibition. An applicant may provide exclusive school bus service if: (1) The applicant operates a school system in the area and operates a separate and exclusive school bus program for the school system; (2) private school bus operators are unable to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards; and (3) a State or local public body or agency thereof (or a direct predecessor in interest from which it acquired facilities and the responsibility to transport students and personnel) was engaged in school bus operations at any time during the twelve month period immediately preceeding November 26, 1974, (August 13, 1973, for section 164(b) of the 1973 Highway Act discussed below) the date section 3(f) was enacted and added to the UMT Act. Section 3(g) bars an applicant from the future receipt of UMTA funds for violating its school bus agreement.

Section 164(b) of the Federal-Aid Highway Act of 1973 also requires the applicants for funds under 23 U.S.C. 103(e)(4) or 142 (a) and (c) to enter into a school bus agreement with the Secretary. The language in this provision is nearly identical to that in section 3(g) of the UMT Act except that it is limited to applicants who apply for funds to purchase buses. Section 3(g) applies to grants for the construction (including purchase of buses) or operation of facilities and equipment for mass transportation.

Section 3(g) of the UMT Act shares a similar legislative history with section 3(f), discussed in Part I. Congress first enacted a school bus provision in the Federal-Aid Highway Act of 1973 (Pub. L. No. 93–87). Section 164(b) of this Act applies to applicants for funds under the UMT Act as well as under 23 U.S.C. 103(e)(4) or 142 (c) and (d). As indicated above, however, section 164(b) only applies to grants for the purchase of buses. Congress added the school bus provision to the UMT Act in the National Mass Transportation Assistance Act of 1974 (Pub. L. No. 93–503) and expanded the agreement requirement to include applications for UMTA operating assistance.

It is important to note that when Congress enacted section 164(b) of the 1973 Highway Act, the only school bus service that it prohibited recipients from providing is service exclusively for the transportation of students and school personnel to and from school. Service that is not exclusive is permissible. The Conference Report for S. 502, which was enacted and became the 1973 Highway Act, reflects this. It states that section 164(b) "is not applicable to the transportation of school children along with other passengers by regularly scheduled bus service at either full or reduced fares." H.R. Rep. No. 410, 93d Cong., 1st Sess. 87 (1973).

Regulatory Background

UMTA published a notice of proposed rulemaking to implement section 3(g) of the UMT Act on June 13, 1975 (40 FR 25309) and published the final rule on April 1, 1976 (41 FR 14127). It is codified at 49 CFR Part 605. UMTA has not amended this regulation.

The school bus regulation defines "school bus operations" as "transportation by bus exclusively for school students, personnel and equipment in Type I and Type II school vehicles as defined in Highway Safety Program Standard No. 17." Th.s standard was promulgated by the National Highway Traffic Safety Administration and defines Type I vehicles as "any motor vehicle used to carry more than 16 pupils to and from school," and Type II vehicles as motor vehicles "used to carry 16 or less pupils to or from school." 23 CFR 1204.4.

Section 605.14 of the school bus regulation prohibits a recipient of assistance under the UMT Act or 23 U.S.C. 103(e)(4) and 142 (a) and (c) from receiving such funds unless it enters into the agreement specified in § 605.15 concerning school bus operations. The terms of the agreement prohibit a recipient from engaging in exclusive school bus operations unless it falls within one of the three exceptions provided in the statute. If a recipient qualifies for one of the exceptions, it must, under § 605.11, demonstrate that to the satisfaction of the Administrator.

Before a recipient (other than a recipient that qualifies for an exception) can conduct eligible school bus operations, it must provide written notice to all private school bus operators in the urban area of its proposed service. (§ 605.16.) Private operators are invited to comment on the proposal at the public hearing required by section 3(d) of the UMT Act. Any comments on the proposal must be submitted with the transcript of the hearing to UMTA. (§ 605.18.) The Administrator then reviews the applicant's proposal and determines whether it will be allowed to conduct the school bus operations. (§ 605.19.) The complaint procedure (§ 605.30–§ 605.35) is similar to the complaint procedure for charter bus.

As indicated above, the legislative history indicates that 3(g) was not designed as a total prohibition on the transportation of school students. In order to implement the concept of "exclusive", the existing regulation sets forth the idea of "tripper service." Tripper service is defined as:

> Regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as "school bus" or "school special". These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published rate schedule. (49 CFR 605.3.)

Alternative Approaches

In this ANPRM, UMTA is proposing several alternative approaches to the current school bus regulation. Although UMTA has received fewer school bus complaints than charter bus complaints, many of the complaints involve the same or similar problems. These proposals, therefore, would address those provisions in the regulation that have been criticized. UMTA seeks comments on each proposal and suggestions for additional approaches.

As with charter bus operations, UMTA has very little data, either quantitive or anecdotal, on the nature and extent of the problems facing private school bus operations. Consequently, UMTA encourages commenters to address this larger issue as we seek to draft a fair and effective regulation.

Existing Regulation

The first alternative UMTA proposes is to retain the existing regulation. The regulation has been in effect for over six years; UMTA recipients and the private school bus operators are familar with it. While there are problems with the regulation (see below), the regulation does provide a complaint resolution process to ensure that recipients comply with the regulation.

Modify Tripper Service

As indicated above, there are some recurring problems with the school bus regulation. Most of the complaints filed with UMTA allege violations of "tripper service." "Tripper service" is regular mass transit service that a recipient modified to accommodate the needs of school students. The regulation requires that any "tripper service" operated by a recipient be regularly scheduled, be operated within a recipient's scheduled area, and be open to the public. While the regulation permits recipients to vary the fare collection techniques for students, the buses cannot be marked "school bus" or "school special." In addition, buses providing "tripper service" may only stop at regular service stops. As stated above, the legislative history for section 3(f) provides evidence of Congress' intent to permit this type of service by recipients.

The complaints alleging violations of "tripper service" list many abuses. For example, recipients have been charged with not permitting members of the general public on tripper buses but allowing only students to board, not letting regular passengers on tripper buses off at regular stops, and marking tripper buses with signs indicating that the bus is a "school bus."

In order to alleviate these and other abuses, UMTA proposes to modify the definition of "tripper service" to include additional mandatory features. While the legislative history for section 3(g) does not mention the factors, it is UMTA's opinion that they are in keeping with the spirit of Congress' intent. First, UMTA could require a recipient to operate a particular service 12 months per year to qualify as tripper service. Second, UMTA could require that any tripper service be regularly operated during the course of the recipient's normal service hours. Third, UMTA could require a recipient to publish its tripper routes on any system maps and system schedules. Fourth, UMTA could prohibit a recipient from designing its routes to include any stops on actual school property. It is UMTA's opinion that these four modifications all serve to emphasize the public nature of the service.

Fifth, UMTA could prohibit recipients from using signs that contain the word "school." The current definition of "tripper service" prohibits recipients from marking buses with signs such as "school bus" or "school special." Several complaints have indicated that signs such as "school extra" or the name of a school are equally as problematic. Thus, to emphasize the public nature of the route, UMTA could prohibit the use of the word "school" in all destination signs.

UMTA seeks the public's comments on these proposed modifications to the definition of "tripper service." We would welcome any suggestions from commenters for additional factors that need to be incorporated into the concept of "tripper service" to ensure that it is part of a recipient's regular service and not designed exclusively for students.

Define "Exclusive School Bus Service"

The third alternative UMTA proposes is to define "exclusive school bus service" and to require each recipient to certify to UMTA that it was not providing the prohibited service. As stated above, section 3(g) of the UMT Act only prohibits recipients from engaging in those school bus operations which are designed "exclusively for the transportation of a students and school personnel." The concept of "tripper service" defines for recipients those allowable school service activities by providing limits on what "not exclusive" service is. UMTA could use the opposite approach and instead of defining the

allowable, it could define what is not allowed, i.e., "exclusive school bus service."

Under this alternative, the definition of "exclusive school bus service" would include the following factors. First, students and school personnel are the only passengers allowed. Second, the bus service only takes students and school personnel to and from school. Third, the route's origin and destination is a school. Fourth, the service operates only during school hours and the school year. Fifth, the bus carries a sign indicating that it is a "school bus." Sixth, the school bus routes are not part of the recipient's scheduled service.

One issue that is raised by this approach is to determine the number of factors listed above that must be present to result in "exclusive school bus service." If all were required, a recipient could delete just one, and argue that the service in question is *not* "exclusive school bus service." This would be too easy a way to avoid the purpose of the regulation which is, of course, to protect private school bus operators. One approach for dealing with this issue is that the presence of any one of the factors listed above is *prima facie* evidence that the recipient is operating service exclusively for students in violation of the UMT Act. Another approach is that the presence of two or three factors is a *per se* violation. UMTA, however, would have to review carefully each complaint to determine if the service in question was, in fact, "exclusive."

UMTA seeks comments on this alternative and would appreciate suggestions for additional factors that are indicia of exclusive school bus service.

Other Alternatives

UMTA acknowledges that the alternatives discussed above do not exhaust the number of approaches to a school bus regulation. UMTA could delete the school bus regulation and substitute an individually negotiated agreement with each recipient. We also could propose legislative alternatives to remedy the problem. Therefore, UMTA seeks the public's suggestions on other alternatives to the current school bus regulation.

Collateral Issue

Complaint Process

The complaint process in the school bus regulation is virtually identical to the process in the charter bus regulation. The problems and alternatives regarding the complaint process discussed in Part I are equally applicable to the school bus regulation and UMTA seeks the public's comments on this.

III. Regulatory Analyses

Executive Order 12291

This is not a major regulation as that term is defined by Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96–354) requires Federal agencies to prepare an initial and final regulatory flexibility analysis for each NPRM and final rule, respectively, that, if promulgated, would have a "significant economic impact on a substantial number of small entities." At the ANPRM stage, the Act requires no analysis. It does, however, suggest that agencies request data from commenters on the ANPRM to assist it in preparing the analysis, if any, for the NPRM. UMTA beleives that the charter bus and school bus regulations do have and will continue to have an effect on small public and private bus operators. At this time, we are uncertain of the extent or degree of that effect.

Therefore, we seek information from commenters to help us make the assessment. If the information UMTA receives, coupled with its own research, indicates that the regulations would have a significant economic impact on a substantial number of small entities, UMTA will prepare an initial regulatory flexibility analysis for the NPRM in conjunction with the economic evaluation required by the DOT Policies and Procedures on Improving Governmental Regulations.

Environmental Impact

The ANPRM will have no environmental impact.

List of Subjects

49 CFR Part 604

Administrative practice and procedures, Buses, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 605

Administrative practice and procedure, Buses, Mass transportation.

Issued on October 6, 1982.

Arthur E. Teele, Jr.,

Urban Mass Transportation Administration.

[FR Doc. 82-28028 Filed 10-8-82 8:45 am]

BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 47, No. 197
Tuesday, October 12, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Siting Energy Facilities Non-Lawyer Representation Waivers and Exceptions

AGENCY: Administrative Conference of the United States; Committee on Regulation.

ACTION: Committee meeting.

AGENDA: The Committee will meet with its consultants to discuss progress on three projects: 1. Interrelation of federal and state procedures for the siting of energy facilities (consultant: Professor Gregory Ogden, Pepperdine University School of Law); 2. Appropriate role of non-lawyers as representatives in agency proceedings (consultant: Professor Jonathan Rose, Arizona State University College of Law); and 3. The use of waivers and exceptions in the operation of a regulatory program (consultant: Professor Peter Schuck, Yale Law School).

DATE AND TIME: Thursday, October 21, 1982; 9:00 a.m. until approximately 1:00 p.m.

PLACE: 2120 L Street, NW., Lower Level Conference Room, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L. Street, NW., Suite 500, Washington, D.C. 20037. Telephone: (202) 254–7065.

Richard K. Berg,
General Counsel.

[FR Doc. 82–27912 Filed 10–8–82; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Advisory Committee on Instrument Standards for Cotton; First Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Advisory Committee on Instrument Standards for Cotton.

Date: November 4–5, 1982.

Place: U.S. Department of Agriculture, Administration Building, Conference Room 104–A, Washington, D.C. 20250.

Time: 9:00 a.m. to 4:30 p.m. on November 4; 8:00 a.m. to noon on November 5.

Purpose: The agenda will include (1) a review of the historical development of cotton standards for both manual classing and for instruments, (2) a discussion of current methods of establishing instrument standards, (3) a comparison of test results obtained from various fiber testing instruments, (4) development of a list of issues for future consideration, and (5) the development of a plan of action.

The meeting is open to the public. Space and facilities are limited. Public participation will be limited to written statements received prior to the meeting. Written statements should be addressed to Jesse F. Moore, Director, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Annex Building, Room 302, Washington, D.C. 20250, (202) 447–3193.

Dated: October 5, 1982.

Eddie F. Kimbrell,
Deputy Administrator, Commodity Services.

[FR Doc. 82–27907 Filed 10–8–82; 8:45 am]
BILLING CODE 3410–02–M

Soil Conservation Service

West Fork of Buffalo Creek Watershed, Texas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the West Fork of Buffalo Creek Watershed, Johnson County, Texas.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76503, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement include the installation of one floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting George C. Marks.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and Local clearinghouse review of Federal and Federally assisted programs and project is applicable)

Dated: September 30, 1982.

Jimmy W. Hill,
Assistant State Conservationist for Water Resources.

[FR Doc. 82–27874 Filed 10–8–82; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Public Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Importers and Retailers' Textile Advisory Committee was established by the Secretary of Commerce on August 13, 1963 to advise U.S. Government officials of the effects on import markets of cotton, wool, and man-made fiber textile agreements.

TIME AND PLACE: October 27, 1982, at 10:30 a.m. in Room 718, #6 World Trade Center (Customs House), New York, N.Y. 10048.

AGENDA: (1) Review of imports trends, (2) Implementation of textile agreements, (3) Report on conditions in the domestic markets, and (4) Other business.

PUBLIC PARTICIPATION: The meeting will be open to public participation to the extent time is available. The public may file written statements with the Committee before or after the meeting. Approximately 30 seats will be available for the public on a first-come-first-served basis.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, Office of the Deputy Assistant Secretary for Textiles and Apparel, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377-3737.

Dated: October 7, 1982.

Walter C. Lenahan,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 82-28138 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

Foreign-Trade Zones Board

[Docket No. 15-82]

Foreign-Trade Zone 62; Brownsville, Texas; Extension of Comments Period

The period for comments in the above case involving the proposed expansion of Foreign-Trade Zone 62 within the Brownsville Navigation District (47 FR 35266, Aug. 13, 1982) is extended to November 8, 1982.

Submissions shall include 10 copies. Material submitted for the record to-date will be available at the places where the application has been available to the public:

Administrative Offices, Brownsville Navigation District, Port of Brownsville, Highways 48 and 511, Brownsville, Texas 78520.

Office of the Excutive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1519, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: October 4, 1982.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 82-27949 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Initiation of Antidumping Investigation; Melamine From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of antidumping investigation—Melamine from Brazil.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether melamine from Brazil is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission "ITC") of this action so that it may determine whether imports of this merchandise are materially injuring, or are threatening to materially injure, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before October 28, 1982, and we will make ours on or before February 21, 1983.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-3003.

SUPPLEMENTARY INFORMATION:

The Petition

On September 13, 1982 we received a petition from counsel on behalf of Melamine Chemicals, Inc. and the melamine industry. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The allegation of sales at less than fair value is supported by comparisons of a United States price (estimated by the petitioner and adjusted for credit costs, commissions, U.S. inland freight, ocean freight, foreign inland freight and insurance and all risks) on sales of the merchandise in the United States with Brazilian ex-factory home market price (based on price quotations) on sales made in Brazil.

Initiation of Investigation

Under section 732(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673a(c) ("the Act"), we must determine, within 20 days after the petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on melamine and we have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping investigation to determine whether melamine from Brazil is being, or is likely to be, sold at less than fair value in the United States. If our investigation proceeds normally, we will make our preliminary determination by February 21, 1983.

Scope of the Investigation

The merchandise covered by this investigation is melamine in crystal form. Melamine is a fine, white, crystalline powder, which is produced by U.S. manufacturers from a mixture of urea and ammonia and is used principally in the manufacture of melamine formaldehyde resins. Melamine is currently classifiable under item 425.1020 of the *Tariff Schedules of the United States Annotated* (TSUSA). Pursuant to the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended, Brazilian melamine enters the United States duty free.

Notification to ITC

Section 732(d) of the Act requires us to notify the United States International Trade Commission of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by October 28, 1982, whether there is a reasonable indication that imports of melamine from Brazil are materially injuring, or are likely to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

October 4, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-27939 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Industrial Nitrocellulose From France

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in France of industrial nitrocellulose receive benefits which constitute subsidies within the meaning of the countervailing duty Law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of industrial nitrocellulose are materially injuring, or threatening to materially injure, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before October 29, 1982, and we will make ours on or before December 8, 1982.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Stuart Keitz or Betty H. Laxague, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, (202) 377-1769/3601.

SUPPLEMENTARY INFORMATION:

Petition

On September 14, 1982, we received a petition from counsel for Hercules Incorporated. The petitioner alleges that manufacturers, producers, or exporters in France of industrial nitrocellulose receive benefits that constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). The petitioner further alleges that imports of this product are materially injuring, or threatening to materially injure, a U.S. industry.

France is a "country under the Agreement" within the meaning of section 701(b) of the Act; accordingly, title VII of the Act applies and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting these allegations. We have examined the petition on industrial nitrocellulose and have found that it meets these requirements.

Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in France of industrial nitrocellulose, as specified in the "Scope of the Investigation" section of this notice, receive benefits that constitute subsidies within the meaning of section 771(5) of the Act. If the investigation proceeds normally, we will make our preliminary determination by December 8, 1982.

Scope of the Investigation

The product covered by this investigation is industrial nitrocellulose containing between 10.8% and 12.2% nitrogen. It should not be confused with explosive grade nitrocellulose which contains over 12.2% nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing inks. It is currently classified as cellulosic plastic materials, other than cellulose acetate, under item number 445.2500 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegations of Subsidies

The petitioner alleges that producers, manufacturers, or exporters in France of industrial nitrocellulose benefit from the following subsidies: financing of security installations; operating and equipment subsidies; equity investment; financing of expansion and acquisitions; preferential loans; and housing and wage subsidies. The petitioner further alleges that certain of these benefits are subsidies by virtue of government ownership of the manufacturer. Government equity ownership *per se* is not a subsidy. Such ownership gives rise to a potential subsidy only when it is on terms inconsistent with commercial considerations. We will investigate whether aspects of the programs alleged to be subsidies by virtue of government ownership may provide countervailable benefits.

Notification of ITC

Section 702(d) of the Act requires us to notifiy the U.S. International Trade Commission of this action and to provide it with the information used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by October 29, 1982, whether there is a reasonable indication that imports of industrial nitrocellulose from France are materially injuring, or threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, they will proceed to conclusion.

October 4, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-27940 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determinations; Certain Steel Products From the Republic of Korea

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determinations.

SUMMARY: We have preliminarily determined that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in the Republic of Korea (Korea) of certain steel products as described in the "Scope of the Investigation" section of this notice. The estimated net subsidy for each firm and for each product is indicated under the "Suspension of Liquidation" section of this notice. Therefore, we are directing the U.S. Customs Service to suspend

liquidation of all entries of merchandise, entered or withdrawn from warehouse, for consumption and to require a cash deposit or bond in an amount equal to the estimated net subsidy.

If these investigations proceed normally, we will make our final determinations by December 20, 1982.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, or Steven Lim, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 377–1276.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigation, we have preliminarily determined that there is resason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of certain steel products, as described in the "Scope of Investigations" section of this notice. The following programs are preliminarily found to be subsidies: 1) Preferential export financing; 2) preferential tax incentives for exporters; 3) special tax exemptions for government-owned firms; 4) special tax exemptions for steel producers; 5) preferential utility rates and port charges for steel producers; 6) tariff incentives, and 7) Masan Free Export Zone or Foreign Capital Inducement Law benefits. The estimated net subsidy for each firm and for each product is indicated under the "Suspension of Liquidation" section of this notice.

Case History

On May 7, 1982, we received a petition from the United States Steel Corporation on behalf of the U.S. industry producing small diameter (16" and under) welded carbon steel pipes and tubes, hot-rolled carbon steel plate, cold-rolled carbon steel sheet, hot-rolled carbon steel sheet and galvanized carbon steel sheet. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided directly or indirectly to the manufacturers, producers, or exporters in Korea of this merchandise.

We found the petition to contain sufficient grounds upon which to initiate countervailing duty investigations, and initiated these investigations on May 27, 1982 (47 FR 24166). We stated that we expected to issue preliminary determinations by August 2, 1982. We subsequently determined that these investigations are "extraordinarily complicated" as defined in section 703(c) of the Act, and on July 22, 1982, we postponed our preliminary determinations for 65 days, until October 4, 1982 (47 FR 32758). On June 21, 1982, the U.S. International Trade Commission (ITC) found that there is a reasonable indication that these imports of certain steel products from Korea, with the exception of imports of cold-rolled carbon steel sheet, are materially injuring, or threatening to materially injure, a U.S. industry. The ITC found no reasonable indication that imports of cold-rolled carbon steel sheet from Korea are materially injuring, or threatening to materially injure, a U.S. industry, and the investigation was terminated with respect to this particular merchandise. The ITC published its determinations in the **Federal Register** on June 30, 1982 (47 FR 28481 and 28488).

We presented questionnaires concerning the allegations to the government of Korea in Washington, D.C. By August 31, 1982, we had received responses from the government of Korea, and eight Korean manufacturers of the remaining products under investigation. We believe that these eight manufacturers account for virtually all current exports of the products under investigation to the United States.

Scope of the Investigation

The merchandise covered by these investigations is:

- Small diameter welded carbon steel pipes and tubes,
- Hot-rolled carbon steel plate,
- Hot-rolled carbon steel sheet,
- Galvanized carbon steel sheet.

For a further description of these products see the Appendix to this notice.

The period for which we are measuring subsidization is calendar year 1981. In addition to receiving a questionnaire response from the government of Korea, we have also received questionnaire responses from the following:

Firms	Carbon steel products
Phoang Iron & Steel Co., Ltd. (POSCO).	Hot-rolled carbon steel plate, hot-rolled carbon steel sheet and galvanized carbon steel sheet.
Union Steel Mfg., Co., Ltd. (Union Steel).	Galvanized carbon steel sheet, and small diameter welded carbon steel pipes and tubes.
Dong Kuk Heavy Industries, Ltd. (DHI).	Small diameter welded carbon steel pipes and tubes.
Fuji Works Korea, Ltd. (FUJI).	Small diameter welded carbon steel pipes and tubes.
Hyundai Pipe Co., Ltd. (Hyundai).	Small diameter welded carbon steel pipes and tubes.
Korea Steel Pipe Co., Ltd. (Korea Pipe).	Small diameter welded carbon steel pipes and tubes.
Masan Steel Tube Co., Ltd. (Masan Tube).	Small diameter welded carbon steel pipes and tubes.
Pusan Steel Pipe Ind., Co., Ltd. (Pusan Pipe).	Small diameter welded carbon steel pipes and tubes.

Analysis of Programs

The following programs were alleged in the petition to be subsidies: (1) Preferential export financing; (2) preferential tax incentives for exporters; (3) special tax exemptions for government-owned firms; (4) special tax exemptions for steel producers; (5) preferential utility rates and port charges for steel producers; (6) tariff incentives; (7) preferential financing and government loan guarantees for steel producers; (8) wage controls for government-run firms; (9) government purchases of steel at inflated prices; (10) government capital grants; (11) a "special steel export subsidy"; (12) indirect subsidies to purchasers of machinery used to make iron and steel; (13) indirect subsidies to purchasers of hot-rolled sheet or coil, and (14) loans at favorable foreign currency exchange rates. Based on our experience in other Korean cases, we also included in our investigation special benefits offered to firms located in the Masan Free Export Zone or offered through the Foreign Capital Inducement Law. We also investigated POSCO's dual pricing system for hot-rolled sheet or coil sold to producers of small diameter welded carbon steel pipes and tubes.

In their responses, the government of Korea and the eight Korean steel producers provided data for the applicable period. Based upon our preliminary analysis of the petition and responses to our questionnaires, we have preliminarily determined the following:

Programs Preliminarily Determined To Be Subsidies

We have preliminarily determined that subsidies are being provided under the programs listed below to manufacturers, producers, or exporters in Korea of small diameter welded carbon steel pipes and tubes, hot-rolled carbon steel plate, hot-rolled carbon

steel sheet, or galvanized carbon steel sheet.

Preferential Export Financing

Under the "Regulations for Export Financing," promulgated by the Korean government on February 25, 1972, short-term financing of up to 90 days is provided to exporters at interest rates which are less than the generally available commercial rates. During 1981, the interest rate for short-term export financing was 12 percent (27 percent if late payment is made), as opposed to normal commercial rates, which ranged between 15–20 percent for most of 1981. This rate also varied depending on the credit rating of the borrower.

Export financing was available for production expenses and for the purchase of raw materials for export production. A loan ceiling for short-term export loans was established based upon the value of a company's total exports in a preceding period.

The government's response indicates that financing was provided by individual private foreign exchange banks and not by the Korean government, that no government guarantees are involved and that the banks are acting in conformance with the regulations. We preliminarily determine that, regardless of the private ownership of the banks, this program is countervailable because the preferential financing is the direct result of a government mandate.

All firms investigated took advantage of this program.

In addition, several firms reported long-term preferential export loans under a special fund for export industries set up by government direction. These loans, which were transacted in 1981, are secured with the firm's assets through a commercial bank and no government guarantees are involved. The responses indicate that a firm must export to qualify for this loan, however, the loan rate is not dependent on continued exportation by the firm. Since this program also appears to be traceable to government mandate, we preliminarily determine it to be countervailable.

In order to calculate the amount of the benefit to each steel producer resulting from these preferential short-term export financing programs, we computed the total difference between the amount of interest paid on all short-term export loans which were transacted in 1981, and the amount of interest that the firm would have had to pay on a comparable timed and sized loan under normal commercial financing. The short-term commercial rates which we used are national rates which are published in monthly bulletins issued by the Bank of Korea. The amount of the total benefit received under this program was divided by that firm's total value of export sales for 1981 to determine the *ad valorem* subsidy to that firm. Since long-term preferential export loans were transacted in 1981 and interest payments were made monthly, we calculated the benefit to each steel producer from these loans beginning in 1981 (when repayments began).

On an overall basis we found that the net benefits, attributable to preferential short-term export loans, to the Korean steel producers, based on the f.o.b. value of the exported merchandise, were as follows:

Product	Ad valorem rate
Small diameter welded carbon steel pipes and tubes	1.12
Hot-rolled carbon steel plate	0.52
Hot-rolled carbon steel sheet	0.52
Galvanized carbon steel sheet	0.60

With respect to our methodology used to compute the above rates, petitioner contends that since commercial bank loans are in short supply and since commercial bank rates are largely the product of government subsidization policies, the Department should use private or "curb" market loan rates instead of commercial loan rates to quantify any subsidies resulting from preferential financing. However, verified information obtained in our recently completed countervailing duty investigation involving certain steel wire nails from Korea and the questionnaire responses received in this investigation indicate that the government of Korea does not require that commercial banks make available credit to certain borrowers. Lending decisions are left to individual banks, which decide whether to grant each loan on the basis of their individual assessment of a loan applicant's creditworthness. Also, the government of Korea does not control the amount of funds an individual bank allocates to export loans and normal commercial loans. This decision is also left to individual banks. Although banks do give preferences to Korea's production industries and export industries, these preferences do not result from government direction or subsidization, but from each bank's own evaluation of how its loan funds can best be secured and effectively used.

Furthermore, the "curb" market has serviced in the past those high risk borrowers that are normally excluded from Korea's primary and secondary sources of credit. Recently the Korean government has restricted the activities of the "curb" market and taken steps to permit borrowers to obtain loans through authorized Korean financial institutions. Since the steel producers under investigation indicate that commercial loans were their alternate source of credit to export loans, and these loans were freely administered by commercial banks, we feel that the rates on these loans were properly used to quantify the amount of subsidies received from the preferential export financing programs.

Subsequent to the period under investigation, on June 28, 1982, the government of Korea reduced the maximum allowable interest rate to be charged by commercial banks on all commercial loans, including export loans, to ten percent. In taking this action, the government eliminated interest rate preferences that previously existed for exporters. Therefore, we note that the *ad valorem* subsidy amounts shown in the "Suspension of Liquidation" section of this notice do not reflect the above listed percentages since loan preferences have not been in effect since June 28, 1982. Consequently, no entries which would be subject to suspension of liquidation would benefit from this program.

Preferential Tax Incentives for Exporters

Article 25 of the Korean Tax Exemption Regulations Law permits a firm earning more than 50 percent of its total proceeds from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation which is determined by a formula based on the firm's foreign exchange earnings and total business earnings. Of the firms investigated, Hyundai, Masan Tube, POSCO and Pusan Pipe reported using accelerated depreciation.

To properly calculate the benefits from the accelerated depreciation program for the period for which we are measuring subsidization (calendar year 1981), it is necessary to determine the tax savings received in 1981 based on accelerated depreciation which has been deducted from 1980 income taxes payable in 1981 and the amount of tax benefit received is not known until taxes are paid. However, since we have obtained accelerated depreciation figures which have been deducted from 1981 income instead of 1980 income, we have preliminarily used 1981 accelerated depreciation figures as the best available information. These figures were used to calculate each firm's tax

savings in 1981. The amount of the tax savings received under this program was divided by the total value of sales in 1981 to determine the *ad valorem* subsidy. We will seek the accelerated depreciation figures which have been deducted from 1980 income for our final determinations.

In addition, Article 12 of the Corporate Tax Law provides for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses.

Under the program governing export losses, a corporation engaged in export or tourist activities may establish a reserve amounting to one percent of foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve funds. If there are no offsets for export losses, the reserve is credited to income and taxed, after a one-year grace period, over a three-year period. Under the program governing overseas market exploration expenses, a corporation engaged in export activities may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in exploring overseas markets are offset from the reserve fund. As in the case of the export loss reserve fund, if there are no offsets for expenses, the reserve is credited to income and taxed, after a one-year grace period, over a three year period.

With respect to the price fluctuation loss program, a corporation engaged in export activities may establish reserves equivalent to five percent of the book value of the products and works in progress to be exported at the close of the business year. This reserve may be used to offset losses incurred from the fluctuation of prices for export goods. These losses may be offset by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following business year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve funds are eventually reported as income and subject to corporate tax either by means of offsetting export losses or by the expiration of the one-year grace period. All export reserve programs serve as an interest free loan to the corporation of the tax savings on these funds. Accordingly, we have quantified the benefits from these reserve funds to each applicable steel producer by calculating the amount of taxes that normally would be due on these funds under Korean law and applying a rate of interest which the firm would have had to pay on a comparably timed and sized loan under normal commercial financing. The amount of the total benefit received under this program was divided by that firm's total value of export sales for 1981 to determine the *ad valorem* subsidy to that firm. Hyundai, Korea Pipe, and Pusan Pipe reported using export activity reserve funds. We found that the net benefit to the Korean steel producers under these programs, based on the f.o.b. value of the exported merchandise were as follows:

Product	Ad valorem rate
Small diameter welded carbon steel pipes and tubes	0.25
Hot-rolled carbon steel plate	0.58
Hot-rolled carbon steel sheet	0.58
Galvanized carbon steel sheet	0.52

Special Tax Exemptions for Government-Owned Firms

Of the firms investigated, POSCO was the only firm owned either directly or indirectly by the government of Korea.

POSCO's questionnaire response indicates that, under Korea's tax exemption control law, the firm was exempt from corporation tax until December 31, 1981. However, because POSCO was exempt from paying corporation taxes, the firm indicates that it was obliged to pay a higher defense tax than was paid by other corporations. POSCO also indicates that it was exempt, until December 31, 1981, from the following additional taxes:

- Residence tax,
- Property tax,
- Registration tax,
- Property acquisition tax.

To properly calculate the benefits from these tax exemption programs for the period for which we are measuring subsidization (calendar year 1981), it is necessary to determine POSCO's tax savings received in 1981 based on 1980 income. This is because taxes on 1980 income become payable in 1981 and the amount of benefit received is not known until taxes are paid. However, since we have obtained tax exemption information for 1981 income instead of 1980 income, we have preliminarily used 1981 tax exemption information as the best available information.

We have quantified the benefits from these tax exemptions to POSCO by calculating the amount of each tax that normally would be due if the tax exemption was not granted. In the case of corporation tax, we adjusted for the additional defense tax which was due. The value of these tax exemptions were allocated over POSCO's total sales in 1981. The tax exemptions resulted in a total subsidy to POSCO of 1.33 percent of the FOB value of the exported merchandise. We will seek tax exemption information for 1980 income for our final determination. Although POSCO's tax exemptions expire on December 31, 1981, the firm receives benefits from taxes which become payable in 1982. Therefore, we have included the above amount in the "Suspension of Liquidation" section of this notice.

Special Tax Incentives for Steel Producers

Under Article 24–5 of the Corporation Tax Act (which was deleted as of December 31, 1981, from this statute and transferred to the Tax Exemption and Control Law under Article 72), the government provides special investment tax credits on a case-by-case basis, if the government decides that a particular investment is needed. Among the investments covered by this tax credit are those investments made by small and medium enterprises between July 1, 1980, and June 30, 1981, in machinery and equipment used directly for manufacturing and mining purposes.

Only one firm investigated, Masan Tube, reported benefits under this provision during the period for which we are measuring subsidization. Masan Tube received an eight percent tax credit on an investment in machinery and equipment.

Although this program is not especially intended for steel producers, we preliminarily find that its implementation was preferential and confers a subsidy. Since this tax benefit was received in 1982, which is outside the period for which we are measuring subsidization, we have not quantified this benefit nor included an amount for this program in the "Suspension of Liquidation" section of this notice.

Preferential Utility Rates and Port Charges for Steel Producers

Petitioner alleged that Korean steel producers are eligible for reduced rates for utilities and related services as "designated companies" under the Iron and Steel Industry Rehabilitation Order (Presidential Decree No. 10,002, August 23, 1980). It is further alleged that steel producers qualify for a deferred payment plan with the Korea Electric Company.

The government of Korea's response indicates that this program was never

implemented. The response further indicates that the only steel producer receiving a similar benefit of this type is POSCO. The responses received from the steel producers under investigation confirm this.

During the period under investigation, POSCO received a 50 percent reduction on its port charges. We calculated the *ad valorem* subsidy to POSCO by dividing its total port charge exemption in 1981 by the firms' total value of sales in 1981. We found POSCO's net benefit under this program to be 0.03 percent of the f.o.b. value of the exported merchandise.

Tariff Incentives

Article 29 of the Korean Foreign Trade Enforcement Ordinance authorizes rebates of tariffs to cover wastage on imported raw materials to be incorporated into manufactured items for export. Petitioner alleged that wastage allowances are being claimed which are higher than the actual wastage levels. Petitioner further alleged that steel producers importing capital equipment are permitted to pay tariffs on an installment basis.

The government's response indicates that wastage allowance is based upon data submitted to the government by the Korean industry showing the amount of raw material necessary to produce any given finished product. The wastage allowance used by the government is the average of all producers. The wastage allowance is updated periodically by the government and the information submitted by the producers is verified by the tax office. Our review of the responses submitted by the steel producers under investigation indicates that the wastage allowance of the government accurately reflected the actual wastage rates incurred by these firms, and we preliminarily determine that no subsidy exists with respect to this program.

The government's response did indicate that deferred payment of import duties is allowed, if the private sector applies with the Ministry of Finance for approval. While the government encourages payment of customs duties on all imports as rapidly as possible, exceptions are made to ease the burden on Korean industry. The government further indicates that in practice, only major manufacturing industries in Korea are eligible to import machinery and equipment under the deferred payment plan. Export-oriented industries such as the textile industry, the footwear industry, makers of luggage and handbags, and producers of consumer items, such as cosmetics, are not eligible for the deferred payment plan.

Since use of this program is not freely available to all Korean industries, we preliminarily determine that it confers a subsidy on those steel producers which have received approval to defer duty payments. The deferred duty program serves as an interest free loan to the corporation of the amount of duty deferred. Accordingly, we have quantified the benefits from this program to each applicable steel producer by calculating the amount of interest that normally would be due if the deferred duties had been borrowed at a rate of interest which the firm would have had to pay on a comparably timed and sized loan under normal commercial financing. The amount of the total benefit received under this program was divided by the firm's total value of sales for 1981 to determine the *ad valorem* subsidy to that firm. Of the firms investigated, Hyundai, Korea Pipe, POSCO, Pusan Pipe and Union Steel reported using deferred duty payments. On an overall basis we found that the net benefits to the Korean steel producers under this program, based on the f.o.b. value of the exported merchandise, were as follows:

Product and manufacturer/producer/exporter	Ad valorem rate
Small diameter welded carbon Steel pipes and tubes	0.05
Hot-rolled carbon steel plate	0.05
Hot-rolled carbon steel sheet	0.05
Galvanized carbon steel sheet	0.05

Masan Free Export Zone or Foreign Capital Inducement Law Benefits

The government's response indicates that the benefits granted to firms located in the Masan Free Export Zone are, essentially, tax incentives of a temporary nature. Only foreign investors and joint ventures (the portion owned by foreign partners) are eligible to receive such benefits. Firms which are wholly or partially foreign owned, and located outside the Masan Free Export Zone still receive these tax benefits under the Foreign Capital Inducement Law. Of the eight firms investigated, only Masan Tube was eligible to receive benefits during the period for which we are measuring subsidization. In 1980, the firm received 50 percent exemptions from the following taxes:

Corporation tax;
Defense tax;
Corporate residence tax;
Property tax.

These tax exemptions which were attributable to 1980 income and resulted in tax benefits in 1981, amounted to 2.93 percent of the total f.o.b. value of Masan Tube's exports in 1981. Masan Tube indicates that its eligibility for benefits under this program will expire on August 23, 1982.

Programs Preliminarily Determined Not To Be Subsidies

We have preliminarily determined that subsidies are not being provided to manufacturers, producers, or exporters in Korea of small diameter welded carbon steel pipes and tubes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet, or galvanized carbon steel sheet under the following programs.

Preferential Financing and Government Loan Guarantees for Steel Producers

Petitioner alleged that government-owned or controlled banks are directed to provide credit to strategic industries such as steel in preference to other non-strategic industries. Petitioner further alleged that government loans at preferential rates or government guaranteed loans are being supplied to the steel industry either directly or through commercial banks.

The government's response indicates that it does not direct banks to supply credit to strategic industries, such as the steel industry, in preference to other industries, but that banks in Korea are allowed to lend funds to all industrial and agricultural sectors on a commercial basis. In this regard, all manufacturing sectors can borrow from banks at commercial rates of interest. Decisions by individual banks concerning whether to lend to particular enterprises and what rate to charge are based upon the commercial assessment by the bank of the creditworthiness of the customer, the bank, and other circumstances surrounding any particular loan. General loans of this type are available at commercial, not preferential rates. The government does not participate in the particular lending decisions of the individual banks. The responses received from the steel producers investigated, including that of government-owned POSCO, state that there are no preferential loans for the steel industry. The responses further indicate that the government did not guarantee any loans received by the steel producers.

Wage Controls for Government-Run Firms

Petitioner alleged that the Korean government limits wage increases for

government-run firms such as POSCO, resulting in lower production costs for this segment (state-owned organizations) of the Korean industry.

The government's response indicates that there are no mandatory wage controls for any industry in Korea. The government does not control or influence the wages paid to POSCO workers, nor does it control or regulate the wages paid by private companies. Furthermore, POSCO's response indicates that its wage levels compare favorably with other national wage indicators.

Government Purchases of Steel at Inflated Prices

Petitioner alleged that the Office of Supply of the Republic of Korea (OSROK) purchases large quantities of steel at inflated prices to eliminate excess inventories of steel producers. Petitioner also alleged that OSROK agrees to advanced payment before actual product delivery to supply funds to steel producers for operation and investments.

With respect to the product under investigation, OSROK purchased only pipe in 1981. The government's response indicates that OSROK purchases steel strictly to meet its own needs. Our review of the responses submitted by pipe producers indicates that OSROK does not make advance payment, and that the prices and terms of sale to OSROK are comparable to the prices and terms of sale to other customers.

Government Capital Grants

Petitioner alleged that the Korean government provides substantial capital grants to the Korean steel industry. Petitioner further cite past government equity investments in POSCO and contends that, since the firm does not pay cash dividends and prospects in the steel industry have not been bright in recent years, such investments are not "arms-length" transactions at market value, but represent a subsidization scheme or capital grant.

The response received from the government and the steel producers under investigation indicate that the government has never provided a grant to any steel producer and, with one exception, has never assumed an expense on behalf of a steel producer. The one exception indicated is the assumption by the government of interest expenses incurred by POSCO on a loan during the period February 22, 1973, through December 31, 1974. Because this interest charge is normally expensed this program does not confer benefits to POSCO for sales made during the period for which we are measuring subsidization. Also, all interest has been paid by POSCO each year since December 31, 1974, with no reimbursement by the government.

With respect to the government's equity participation in POSCO, the record indicates the following facts. POSCO was incorporated in April 1968. The government has had substantial participation in the ownership of POSCO since its inception. POSCO's first plate and hot strip mills were completed in 1972, but its first blast furnace did not begin production until 1973. The company has grown steadily during the past decade, increasing raw steel capacity from 1.03 million tons in 1973 to 8.5 million tons at the end of 1981. POSCO is a closed corporation whose stock is not traded on any organized stock market.

It is the Department's position that government equity ownership gives rise to a potential subsidy only when such ownership is on terms which are inconsistent with commercial considerations. We do not feel this is the case with respect to POSCO. Our review of all financial statements issued by POSCO since 1972 indicates that the firm has been profitable since completion of its initial pouring facilities in 1973. Key indicators such as debt to equity ratios, interest coverage, etc., have all been healthy. Furthermore, government studies used in the decision to invest in POSCO projected a strongly profitable operation and the firm's continuous access to both domestic and foreign capital markets attests to its commercial viability. For these reasons we preliminarily determine that the purchase of equity in POSCO by the government is not inconsistent with commercial considerations and, therefore, does not give rise to a potential subsidy.

Special Steel Export Subsidy

The petitioner alleged the existence of a special steel export subsidy and has cited the December 1980 issue of the Kosa Bulletin, published by the Korea Iron and Steel Association, which makes reference to such a program.

The questionnaire responses received from the government and the steel producers under investigation indicate that no such program exists.

Indirect Subsidies To Purchasers of Machinery Used To Make Iron and Steel

Petitioner alleged that, until December 31, 1981, producers of machinery for iron and steel manufacturing enjoyed special tax deductions and exemptions which reduced the capital costs to iron and steel producers.

The question presented is whether the products under investigation have benefited from subsidies, not whether producers of machinery for iron and steel manufacturing have received subsidies. As we stated in our final determination in the countervailing duty investigation of certain steel wire nails from Korea, which was announced on September 8, 1982 (47 Fed. Reg. 39549), we believe that benefits bestowed upon the manufacturer of an input do not necessarily flow down to the purchaser of that input, if the sale is transacted at arm's length. In an arm's length transaction, we believe it is reasonable to assume that the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear. Thus, it is not likely the seller will pass countervailable benefits through to the purchaser. In the absence of evidence to the contrary, we preliminarily determine that purchasers of machinery for iron and steel manufacturing machinery do not receive indirect benefits as a result of subsidies to producers of such machinery.

Indirect Subsidies to Purchasers of Hot-Rolled Sheet or Coil

The petitioner alleged that producers of welded carbon steel pipes and tubes benefit from the purchase of Korean hot-rolled sheet or coils at subsidized prices. Petitioner contends the government's domestic subsidies to POSCO and other hot-rolled plate and sheet producers constitute an indirect subsidy on raw materials used by the Korean pipe and tube producers.

As indicated above, we believe that benefits bestowed upon the manufacturer of an input do not flow down to the purchaser of that input if the sale is transacted at arm's length. However, our investigation of POSCO's dual pricing systems is related to this allegation and is discussed below.

POSCO's Dual Pricing System

In our countervailing duty investigation of certain steel wire nails from Korea, a dual pricing system used by POSCO to sell rod to nail producers was examined by the Department to determine if this system as implemented by a government-owned firm, conferred a subsidy to the nail producers that purchase rod. Since this dual pricing system also applies to sales of hot-rolled sheet or coil (coil) to pipe and tube producers, we have examined POSCO's pricing for purposes of this investigation as well.

As in the case of rod, coil is purchased on a cash or local letter of credit basis.

The letter of credit price is stated in U.S. dollars but paid for in Korean won at the official Bank of Korea exchange rate prevailing on the date of delivery. All cash purchases are made in Korean won. Coil purchased on the basis of a local letter of credit must be used to produce an export product, and POSCO requires evidence that such coil is destined for export use. Coil purchased on a cash basis can be used for both domestic or export sales. The letter of credit price is generally lower than the cash price, though there are exceptions.

The result is a dual pricing system, one for coil used in products which must be exported, the other for coil in products for either domestic or export use.

The government of Korean attributes the differences in prices in both markets to Korea's import duties. The Korean domestic market for coil is protected by a tariff. The market for coil used for export production, however, is unprotected as a result of a duty drawback system which generally results in a more competitive market for inputs destined for export.

Imported steel in Korea is subject to normal customs duties. As is commonly the practice, these duties are refunded if the steel is exported, whether or not further processing occurs. This is known as duty drawback, and does not confer a subsidy within the meaning of the countervailing duty law. However, this practice can create a dual pricing structure with respect to imported inputs, because the price for imported inputs used for products destined for the domestic market will include customs duty, while the duty will not be included in the price of imported inputs used in products destined for export. Since a domestic producer of the inputs acts to maximize revenues, his price to producers for the domestic market will be increased by an amount equal to the effective protection afforded by the tariff. The domestic producer will not include that amount in this price to exporters since no effective protection is afforded where duty drawback applies. Were he to do otherwise, the exporters would turn to foreign sources for their inputs.

We have therefore preliminarily determined that the different prices for purchases do not arise from a scheme to subsidize exports, but rather are a commercial response to a segmented market, one segment being protected and the other fully open to foreign competition.

Information on the record indicates that POSCO faces competition from producers of coil in Australia, France, and Japan who sell in the Korean market at comparable prices to POSCO's letter of credit prices. Our conclusion that POSCO's dual coil pricing system does not confer any countervailable benefit is consistent with the Illustrative List of Export Subsidies (the List), annexed to the *Agreement on Interpretation and Application of Article VI, XVI AND XXIII of the General Agreement on Tariffs and Trade.* Under item (d) of the List, price preferences for inputs to be used in the production of export goods constitute a subsidy only if the preference lowers the price of the input below that which the input purchaser would pay on world markets. *See* the List, item (d). Although this item applies specifically to subsidies provided by governments or their agencies, the principle contained in item (d) applies with equal force to these circumstances.

Loans at Favorable Foreign Currency Exchange Rates

The petitioner alleged that loans are made to Korean steel producers at fixed or manipulated rates of exchange that are more favorable than official or actual exchange rates.

Based on the questionnaire responses received to date, the Department has found no evidence of the existence of such a program.

Verification

In accordance with section 776(a) of the Act, we will verify, all data used in making our final determinations in these investigations.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend the liquidation of all entries of small diameter welded carbon steel pipes and tubes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet and galvanized carbon steel sheet which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of the merchandise in the amounts indicated below:

Products and manufacturer/producer/exporter	Ad valorem rate
Small diameter welded carbon:	
Steel pipes and tubes:	
Masan tube	3.23
Other manufacturers investigated	0.00
All other manufacturers/producers/exporters	3.23
Hot-rolled carbon steel plate:	
All manufacturers/producers/exporters	1.99
Hot-rolled carbon steel sheet:	
All manufacturers/producers/exporters	1.99
Galvanized carbon steel sheet:	
POSCO	1.99
Union Steel	0.57
All other manufacturers/producers/exporters	1.99

With the exception of Masan Tube, all other pipe and tube producers received benefits of 0.30 percent which is *de minimis.* Although we are using a zero cash deposit or bonding rate for these firms, they are not excluded from these preliminary affirmative determinations.

Our reason for not excluding these firms is that all of them had received benefits which were more than *de minimis* from preferential short-term export financing programs during the period for which we are measuring subsidization. We did not include these totals in the above estimated subsidy rates because the government subsequently eliminated the preferential loan rates for export loans on June 28, 1982. However, the programs themselves have not been eliminated and there remains a possibility that preferential rates will be resumed in the future.

With respect to these preferential short-term export financing programs, we have preliminarily concluded that no entries subject to this suspension of liquidation have benefited from these programs and we have not included the amounts of subsidies found on these programs in 1981 in the subsidy amounts shown above.

Where the manufacturer is not the exporter, and the manufacturer is known, the rate for the manufacturer shall be used in determining the cash deposit or bond amount. If the manufacturer is unknown, the rate for all other manufacturers/producers/exporters shall be used.

Where a company specifically listed above has not exported a particular product during the period for which we are measuring subsidization, the cash deposit or bond amount shall be based on the highest rate for products that were exported by that company. We are directing the U.S. Customs Service to require a cash deposit or bond in the amount indicated above for each entry of the subject merchandise entered on or after the date of publication in **Federal Register.**

ITC Notification

In accordance with section 703(d)(3) of the Act, we will notify the ITC of this action and make available to it all nonpriviledged and nonconfidential information. We will also allow the ITC access to all priviledged and confidential information in our files, provided it confirms that it will not

disclose such information either publicly or under any administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on November 23, 1982, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The participants; (2) the reason for attending; and (3) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 22, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34; within thirty days of this notice's publication, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

Appendix

Description of Products

For Purpose of this investigation:

1. The term *"hot-rolled carbon steel plate"* covers carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 of an inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615, or 607.94, of the *Tariff Schedules of the United States Annotated ("TSUSA");* and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.11 of the TSUSA. Semi-finished products of solid rectangular cross section with a width at least four times the thickness in the cast condition or processed only through primary mill hot-rolling are not included.

2. The term *"hot-rolled carbon steel sheet"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a hot-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 8 inches in width and in coils or if not in coils under 0.1875 of an inch in thickness and over 12 inches in width; as currently provided for in items 607.6610, 607.6700, 607.8320, 607.8342, or 607.9400 of the *Tariff Schedules of the United States Annotated "TSUSA". PLEASE NOTE THAT THE DEFINITION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 607.6610 AND 607.8320).*

3. The term *"Galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.11 or 608.13 of the *Tariff Schedules of the United States Annotated ("TSUSA"). NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.11).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

4. The term *"small diameter welded carbon steel pipes and tubes"* covers welded carbon steel pipes and tubes with walls not thinner than 0.065 of an inch, of circular cross section and 0.375 of an inch or more in outside diameter but not more than 16 inches as currently provided for in items 610.3208, 610.3209, 610.3231, 610.3232, 610.3241, 610.3244, and 610.3247, of the *Tariff Schedules of the United States Annotated ("TSUSA").* Pipes or tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feedwater heaters, or conforming to A.P.I. specifications for oil well tubing, with or without couplings, cold drawn pipes and tubes and cold-rolled pipes and tubes with wall thickness not exceeding 0.1 inch are *not included.*

[FR Doc. 82-27941 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Affirmative Countervailing Duty Determination; Small Diameter Welded Carbon Steel Pipes and Tubes From Brazil

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of small diameter welded carbon steel pipes and tubes (welded pipe and tube). The estimated net subsidy is 12.95 percent *ad valorem.* Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of welded pipe and tube from Brazil which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on this product in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by December 20, 1982.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Paul J. McGarr, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of welded pipe and tube. For purposes of this investigation, the following programs are preliminarily found to confer subsidies:

- IPI export credit premium
- Preferential working capital financing for exports
- Income tax exemption for export earnings
- Long-term loans

We estimate the net subsidy to be 12.95 percent *ad valorem.*

Case History

On May 7, 1982, we received a petition from United States Steel Corporation, filed on behalf of the U.S. industry producing welded pipe and tube. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Brazil of welded pipe and tube.

We found the petition to contain sufficient grounds upon which to initiate

a countervailing duty investigation, and on May 27, 1982, we initiated a countervailing duty investigation (47 FR 24168). We stated that we expected to issue a preliminary determination by August 2, 1982. We subsequently determined that the investigation is "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until October 4, 1982 (47 FR 32758).

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. On June 30, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring, or threaten to materially injure, a U.S. industry (47 FR 28488).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C. On September 9, 1982, we received the response to that questionnaire.

Scope of the Investigation

For purposes of this investigation, the term *"small diameter welded carbon steel pipes and tubes"* covers welded carbon steel pipes and tubes with walls not thinner than 0.065 of an inch, of circular cross section and 0.375 of an inch or more in outside diameter but not more than 16 inches as currently provided for in items 610.3208, 610.3209, 610.3231, 610.3241, 610.3244, and 610.3247, of the *Tariff Schedules of the United States Annotated.* Pipes or tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feedwater heaters, or conforming to A.P.I. specifications for oil well tubing, with or without couplings, cold drawn pipes and tubes and cold-rolled pipes and tubes with wall thickness not exceeding 0.1 inch are *not included.*

There are five known producers and exporters in Brazil of welded pipe and tube to the United States. We have received information from two of these companies, Persico Pizzamiglio S.A. (PERSICO) and Industria Brasileira de Tubos S.A. (IBT), which represented over 90 percent of exports of this product during the period for which we are measuring subsidization—calendar year 1981.

Analysis of Programs

In its response, the government of Brazil provided data for the applicable period. Based upon our analysis to date of the petition and the response to our questionnaire, we preliminarily determine the following.

I. Programs Preliminarily Determined To Be Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exports in Brazil of welded pipe and tube under the following programs.

A. Industrialized Products Tax (IPI) Export Credit Premium

The IPI export credit premium has been found to be a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981. Currently, the program is scheduled to be phased out in several steps, ending on April 1, 1983.

Exporters of welded pipe and tube are eligible for the maximum IPI export credit premium. Up until March 30, 1982, 15 percent of the "adjusted" f.o.b. invoice price of the exported merchandise was reimbursed in cash to the exporter through the bank involved in the export transaction. Subsequently, the government of Brazil reduced the benefit to 14 percent on March 31, 1982, 12.5 percent on June 30, 1982, and 11 percent on September 30, 1982.

In calculating the amount the exporter is to received, several deductions may be made to the invoice price to obtain the "adjusted" f.o.b. value. These adjustments include: any agent commissions, rebates or refunds resulting from quality deficiencies or damage during transit, contractual penalties, and the value of imported inputs. In order to receive the maximum export credit premium, the exported product must consist of a minimum of 75 percent value added in Brazil. If this minimum limit is not met, there is a specific calculation to reduce the f.o.b. invoice price when calculating the base upon which the IPI export credit premium is paid. Since the companies involved in this investigation import large quantities of carbon steel coil, they do not receive the maximum available benefit.

To determine the amount of subsidy, we calculated the value of the IPI credits as of the date of shipment rather than the date of receipt, not taking into account the devaluation of the cruzeiro in accordance with section 771(6)(B) of the Act. We then divided the value of the IPI credits by the value of exports and calculated a subsidy value of 10.02 percent.

This rate is premised on an IPI export credit premium of 15 percent. The government of Brazil has made three reductions in the level of the IPI credit during 1982, the most recent on September 30, 1982 to 11 percent. Accordingly, the Brazilian government asserts that a downward adjustment in the rate for this program is appropriate to reflect the current availability of the benefit.

We agree and have made a proportional reduction in our calculation above. However, since some entries subject to the suspension of liquidation ordered by this preliminary determination will have received an IPI credit of 12.5 percent, we have used that figure in making the adjustment. On this basis, we calculated an *ad valorem* export subsidy of 8.35 percent.

B. Preferential Working Capital Financing For Exports: Resolution 674

Under this program, companies are declared eligible to receive working capital loans by the Department of Foreign Commerce of the Banco Central do Brasil (CACEX). These loans may have a duration of up to one year. Firms in the steel industry can obtain this financing at preferential rates for up to 20 percent of the net f.o.b. value of the previous year's exports. We preliminarily determine that such financing is an export subsidy.

The net export value is calculated by taking numerous deductions from the export value of the merchandise, including agent commissions, contractual penalties or refunds, exports denominated in cruzeiros, imported inputs over 20 percent of the export value, and a deduction for the company's trade deficit as a percentage of the value of its exports. In addition, any growth in the cruzeiro value of exports over the previous year will reduce the value of the benefit as a percentage of the current year's exports.

To determine the value of loans in existence under this program during 1981, we prorated any loans that straddled other years. For loans taken out in 1980, only that portion extending into 1981 was included in our calculation. Any 1981 loans extending into 1982 were similarly adjusted. We then divided the total value of these loans by the total value of exports for the two companies in 1981 to calculate the amount of preferential financing they received.

As in previous Brazilian countervailing duty cases, we are using the rate established by the Banco do Brasil for discounting sales of accounts receivable as the commercial rate for the acquisition of short-term working capital. Although we are comparing the

terms of a loan with the terms of sale of an asset, we have used this comparison because information provided by the government of Brazil indicates that, within the Brazilian financial system, working capital is normally raised through the sale of accounts receivable. Currently, the rate for discounting sales of accounts receivable is 59.6 percent plus a 6.9 percent tax on financial transactions (IOF). The subsidy is the difference between the interest rate available under Resolution 674 and the commercial rate.

The interest rate on loans under Resolution 674 is 40 percent, with interest payable semiannually and the principal fully payable on the due date of the loan. The effective rate of interest for these loans is 44 percent. These loans are also exempt from the IOF. Therefore, the differential between these two types of financing is 22.5 percent. When multiplying this differential by the amount of preferential financing received as a percent of exports, we calculated an *ad valorem* export subsidy of 2.89 percent.

C. Income Tax Exemption For Export Earnings

Exporters of welded pipe and tube are eligible to participate in this program, under which the percentage of their profit attributable to export revenue is exempt from income tax. To arrive at this percentage, export revenue is divided by total revenue. The amount of profit exempt from the income tax is then multiplied by the 35 percent corporate income tax rate to determine the amount of the benefit.

In a program of this kind, benefits cannot be determined with finality until the books are closed sometime in the following year. Therefore, we must look at fiscal year 1980 income tax returns to determine if any benefit was received in fiscal year 1981. PERSICO and IBT received benefits under this program in 1981. By dividing the benefit received by the value of exports, we calculated an *ad valorem* export subsidy of 0.55 percent.

D. Long-Term Loans

PERSICO and IBT have received loans from the National Bank for Economic Development (BNDE) and FINAME, a program of BNDE for the purchase of capital equipment manufactured in Brazil. Generally, these loans are fully indexed to the inflation rate in Brazil and are made at fixed real interest rates. The index used for these loans is the ratio established for the Readjustable Bonds of the National Treasury (ORTN); the interest rates range from 5 to 9 percent, depending on the time and the program under which the loan was granted. FINAME loans are granted through commercial banks rather than directly from BNDE and carry higher real interest rates than BNDE loans. Both companies have also received foreign currency loans with interest rates of LIBOR plus a spread that approximates the average spread available on such LIBOR loans in Brazil.

Long-term financing in cruzeiros is available in Brazil only through government-controlled financial institutions. We do not have a benchmark in Brazil for fixed interest rate long-term loans in cruzeiros to compare with the interest rates on BNDE loans. However, since these loans are indexed, the interest rates are real interest rates. This allows us to construct a benchmark based on the real interest rates of the only private long-term loans commercially available in Brazil—the foreign currency loans at LIBOR-plus-spread. The comparison of that constructed benchmark and the interest rates on the BNDE loans suggests that, when fully indexed, they are not made at preferential rates, and we preliminarily determine that such BNDE loans are not countervailable.

FINAME loans are available to a wide variety of sectors in Brazil. The steel industry has received such loans in proportions similar to other large capital-intensive industries in Brazil. This appears to be warranted by the capital requirements of such industries. In addition, numerous other sectors also received loans from FINAME during this period. Based on the general availability of these fully-indexed loans, we preliminarily determine that they do not confer a subsidy.

Some long-term cruzeiro loans have been granted that are neither fully indexed nor generally available. Under a program no longer in operation, BNDE and FINAME granted some loans to PERSICO and IBT that are adjusted at only 20 percent of the variation in ORTN. Both companies still have outstanding balances on these loans, and we preliminarily determine that these loans are countervailable. Based on the information provided by the government of Brazil, we divided the interest payments saved in 1981 due to the favorable terms by the total sales of the two companies. The *ad valorem* subsidy from these loans is 1.16 percent.

II. Programs Preliminarily Determined Not To Be Subsidies

We preliminarily determine subsidies are not being provided to manufacturers, producers, or exporters in Brazil of welded pipe and tube under the following programs.

A. Regional Development Investment Subsidy

Brazilian tax law allows any corporation that owes corporate income taxes to elect to apply up to 51 percent of its corporate income taxes owed to the government to specified investment funds. The investment funds generally are for the economic development of certain regions, industries, or national interests (e.g., the Amazon, the Northeast, fisheries, tourism and reforestation). The steel industry is not among the targeted sectors. If a corporation elects to direct the taxes it owes to the government into one or more of the specified investment funds, it receives stock for its investment in those funds. Upon receipt of the stock, which must be held at least five years, the investment is included in the equity holdings of the corporation.

PERSICO took part in this program in 1981. We preliminarily determine that election to participate in this program does not constitute a subsidy on welded pipe and tube, however, since all corporations which pay corporate income taxes are eligible to participate in the program on equal terms.

B. Export Financing Under Communication 331

Communication 331 is a set of rules and regulations established by the Brazilian government to govern foreign exchange contracts for export transactions. Beyond establishing these rules, the government has no further involvement. Banks that act as intermediaries in export transactions operate under these rules but are free to choose whether they will discount an account receivable denominated in foreign currency, the type of transaction at issue in this program.

The government of Brazil states that it provides no resources to banks to enable them to perform these operations nor does it establish the discount rates. The rate of discount reflects commercial considerations such as the bank's relationship with its customer, its own circumstances, and market rates of interest, which generally track LIBOR rates. As such, we preliminarily determine that the discounting of foreign exchange accounts receivable under these conditions is not a subsidy.

C. Transportation Subsidies

The Brazilian government, in its response to our questionnaire, states that PERSICO and IBT receive no preferential rates when using railroads and ports. We have no evidence that any programs exist which give

preferential freight rates to steel exporters.

D. Income Tax Deductions For Employee Training And Meals

PERSICO has a tax deductible training program for which it has taken deductions for training costs and meals. The maximum deduction for training costs is 10 percent of taxes owed, and for meals 5 percent of taxes owed, although the combined deduction may not exceed 10 percent of taxes owed. The government of Brazil states that under applicable tax law any manufacturer, without sectoral or regional preference, may take the above deductions for training and meal expenditures for employees. Consequently, we preliminarily determine that the benefits conferred under this program are not countervailable because they are generally available on equal terms.

E. Subsidized Feedstock

PERSICO and IBT are unrelated to their domestic suppliers of carbon steel coil, and the government of Brazil states that there is no price discrimination by domestic suppliers of coil in favor of welded pipe and tube producers. PERSICO also purchases coil from foreign sources, and the Brazilian government claims that the prices paid for coil from foreign suppliers are at or below the prices paid for comparable product from Brazilian suppliers.

Any benefits bestowed upon the manufacturer of an input do not necessarily flow down to the purchaser of that input if the sale is transacted at arm's length. In an arm's length transaction, the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear.

Absent special circumstances warranting a contrary conclusion, the Brazilian welded pipe and tube producers do not benefit from any subsidies to suppliers of coil as long as the price for coil manufactured in Brazil is not less than the price for imported coil available to Brazilian welded pipe and tube producers. During the period for which we are measuring subsidization, the price charged for coil manufactured in Brazil was equal to or greater than the price for imported coil. Since the coil manufacturers and the welded pipe and tube producers are not related, special circumstances do not exist. Therefore, we preliminarily determine that there is no indirect subsidy to the welded pipe and tube producers because of their purchase of domestic coil.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determined that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation," were not used by the manufacturers, producers, or exporters in Brazil of welded pipe and tube.

A. The Commission For The Granting Of Fiscal Benefits For Special Export Programs (BEFIEX)

BEFIEX grants several types of benefits to companies that are part of certain targeted industries and that sign contracts that include specific export commitments. These benefits include the following: a reduction of between 70 and 90 percent of the import duties and the IPI tax on the import of machinery, equipment, apparatus, instruments, accessories and tools necessary to meet the approved export commitment; an extension of the period for carrying tax losses forward from four to six years, provided no dividends are paid during that time; and amortization of pre-operational expenses of BEFIEX projects at the discretion of the company rather than the normal straight-line amortization over ten years. As a general rule, companies that sign BEFIEX contracts guaranteeing these and any other benefits must make an export commitment that over the life of the project it will generate export earnings of at least three times the value of imports for the project. The government of Brazil states that the steel industry in Brazil has been developed primarily to supply the domestic market. Since PERSICO and IBT export only a small portion of their production, they are not in a position to make the required export commitments. PERSICO and IBT received no benefits from this program in 1981.

B. Industrial Development Council (CDI) Program

This program allowed an exemption of 80 percent of the customs duties and 80 percent of the IPI tax on certain imported machinery for projects approved by the CDI. Decree Law 1726 repealed this program in 1979 and no new projects are eligible for these benefits. However, companies with projects approved prior to repeal may still receive these benefits pending the completion of the project. The govenment of Brazil states that PERSICO and IBT did not receive such benefits during 1981.

C. Preferential Financing for the Storage of Merchandise Destined for Export: Resolution 330

This program provides financing for up to 80 percent of the value of merchandise placed in a warehouse and destined for export. Interest rates for such loans are 40 percent per annum, with interest payable semi-annually. The government of Brazil states that neither PERSICO nor IBT used this program.

D. Accelerated Depreciation for Capital Goods Manufactured in Brazil

This program allows companies that purchase Brazilian-made capital equipment as part of an approved CDI expansion project to depreciate this equipment at twice the rate normally permitted under tax laws. The government of Brazil states that neither PERCISO nor IBT used the accelerated depreciation provisions to reduce its tax liabilities in 1981.

E. Export Financing Under Resolution 68

This program provides financing for the export of Brazilian goods for a minimum period of 181 days. Such financing is granted on a transaction-by-transaction basis and may cover up to 85 percent of the f.o.b. invoice price for the merchandise (plus freight and insurance). To be eligible, the exporter must show that the foreign purchase has prepaid 15 percent of the invoice price. Neither PESICO nor IBT used Resolution 68 to finance exports of welded pipe and tube to the United States in 1981.

G. IPI Rebates for Capital Investment

Decree Law 1547 (April 1977) provides funding for the expansion of the Brazilian steel industry through a rebate of the IPI, the Brazilian federal excise tax. Under this tax system, a company determines its liability for the tax at the end of each month. The net tax owed is calculated as the difference between the total IPI the company paid on purchases and the total IPI it collected on domestic sales. Normally, within five months after the end of each month, a company must pay the amount of the net tax owed directly to the Brazilian government. This net IPI tax is the basis for calculating the rebate for investment. A Brazilian steel company may deposit 95 percent of the net IPI tax in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects, and when rebated to the firms constitute tax-free capital reserves which must eventually be converted into subscribed capital.

The government of Brazil states that neither PERSICO nor IBT received

benefits under this program because they are considered fabricators rather than producers of steel products and thus are not eligible to receive such rebates.

Verification

In accordance with section 776(a) of the Act, we will verify data used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of welded pipe and tube from Brazil which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise in the amount of 12.95 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with section 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on November 15, 1982, at the U.S. Department of Commerce, Room 3080, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by November 8, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355–34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Gary N. Herlick,

Deputy Assistant Secretary for Import Administration.

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BILLING CODE 3510-25-M

Preliminary Negative Countervailing Duty Determination; Large Diameter Welded Carbon Steel Pipes and Tubes From France

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary negative countervailing duty determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are not being provided to manufacturers, producers, or exporters in France of large diameter welded carbon steel pipes and tubes, as described in the "Scope of Investigation" section of this notice. If this investigation proceeds normally, we will make our final determination by December 17, 1982.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 377–3518.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is no reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in France of large diameter welded carbon steel pipes and tubes, as described in the "Scope of Investigations" section of this notice.

For purposes of this investigation, we preliminarily determine that while preferential financing from Credit National confers a benefit to Vallourec and Pont a Mousson, the estimated net subsidy to each manufacturer is *de minimis*, and therefore our preliminary countervailing duty determination is negative.

Case History

On May 13, 1982, we received a petition from United States Steel Corporation filed on behalf of the U.S. industry producing large diameter welded carbon steel pipes and tubes. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in France of the steel product listed above.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on June 3, 1982, we initiated a countervailing duty investigation (47 Fed. Reg. 24169). We stated that we expected to issue a preliminary determination by August 2, 1982. We subsequently determined that the investigation is "extraordinarily complicated", as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until October 4, 1982 (47 Fed. Reg. 32758).

Since France is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. On June 21, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

We presented questionnaires concerning the allegations to the Delegation of the Commission of the European Communities and to the government of France in Washington, D.C. On August 16 and 18, 1982, we received the responses to the questionnaires. Supplemental responses were received on September 3, 20 and 22, 1982.

Scope of Investigation

The product covered by this investigation is large diameter welded carbon steel pipes and tubes. The product is fully described in Appendix 1, which follows this notice.

Vallourec and Pont a Mousson are the only known producers and exporters in France of the subject product which is exported to the United States. The period for which we are measuring subsidization is calendar year 1981.

Analysis of Programs

Throughout this notice, general principles and conclusions of law applied by the Department of Commerce

to the facts of the current investigation concerning large diameter welded carbon steel pipes and tubes are described in detail in Appendices 2 and 3, which appear with this notice.

Based upon our analysis of the petitions and responses to our questionnaires, we determine the following.

I. Program Preliminarily Determined to Confer a Benefit

We preliminarily determine that a benefit is being provided under the program listed below to manufacturers, producers, or exporters in France of large diameter welded carbon steel pipes and tubes included in this investigation.

A. Preferential Financing—Credit National (CN)

Credit National is a semi-public credit institution, with special legal status, which issues medium- and long-term loans to French industry, including the steel industry. Loan funds are raised by offering bonds in the public marketplace. These bonds are guaranteed by the government of France.

In addition, CN has participated in bank loans to the steel industry through such means as assuring the banks that they can rediscount the loans with CN. In effect, this constitutes a guarantee.

In most cases, CN acts only as part of a loan syndicate. The terms of any loans CN makes on behalf of the French government are set by the French government. Information indicates that CN loans to the French steel industry are made with government backing, and that CN's operating budget is financed by the French government.

There is some evidence suggesting that CN loans are available to all industries and regions. However, we are unable to establish that these loans are not given at the direction of the government of France, or that CN loans are generally available. Therefore, we preliminarily determine that these loans confer a benefit within the meaning of the countervailing duty law, to the extent that they were provided at preferential, below-market rates.

The subsidy rate for any loan and loan guarantee from CN and bank syndicates in which CN participated for which principal was still outstanding in 1981, and which was made at a rate below the commercial benchmark for a comparable loan in the year of issue, is calculated according to the general methodology for loans and loan guarantees outlined in Appendix 2. For the commercial benchmark, we used the monthly financial statistics on the secondary market yields of private bonds in France published by the OECD. For the discount rate, we used the average annual yield of public and semi-public sector bonds on the secondary market published by the OECD because it represents the best estimate of the risk-free rate in France.

Where benefits were provided to all steel production, they were allocated over the value of all steel sales of the company receiving the benefit. Where benefits were provided to the production of large diameter welded carbon steel pipes and tubes, they were allocated over the total value of each company's sales of this product.

Using the method outlined in Appendix 2, we computed the following subsidies:

[In percent]

Manufacturer/producer/exporter	Ad valorem rate
Vallourec	0.024
Pont a Mousson	0.332

II. Programs Preliminarily Determined Not to Confer Benefits

We preliminarily determine that the French government is not providing benefits to manufacturers, producers or exporters of large diameter welded carbon steel pipes and tubes under the following programs.

A. Benefits to Vallourec via Usinor

Petitioner alleges that Vallourec indirectly receives countervailable benefits through its purchases of Usinor's subsidized plate and sheet products. Vallourec is owned by Usinor (which is largely government-owned), Nord-Est (a publicly-held holding company), and private shareholders. The ownership shares are 25 percent, and 50 percent, respectively.

With respect to sales of Usinor's subsidized plate and sheet products to Vallourec, we believe that benefits bestowed upon the manufacturer of an input do not necessarily flow down to the purchaser of that input, if the sale is transacted at arm's length. In an arm's length transaction, we believe it is reasonable to assume that the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear.

When sales transactions are made at arm's length, economic considerations must be taken into account to determine if a benefit received by a seller should be passed on to the purchaser. A benefit will not be passed on if the 'own' price elasticity of demand for the seller's product is less than one. Studies show that the 'own' price elasticity of demand for steel is less than one. Therefore, there is no economic rationale for a seller of a subsidized steel product to pass on its subsidy in the form of lower prices to the buyer.

The application of these principles to the allegation that Vallourec benefits from the purchase of Usinor s subsidized plate and sheet are as follows. Usinor is Vallourec's primary supplier of raw materials used in the production of the products under investigation. Most of Vallourec's remaining plate and sheet requirements are furnished by Dillinger, a producer located in the Federal Republic of Germany. The record of these transactions shows that the prices charged for Usinor's plate and sheet products are comparable to prices for similar products from other suppliers, including those suppliers located outside of France.

Therefore, we preliminarily determine that Vallourec and Usinor deal at arm's length, and that the benefits to Usinor's plate and sheet production do not provide subsidies to Vallourec's pipe and tube production.

B. Export Credit Insurance—Commercial Risk Coverage

The Compagnie Francaise d'Assurance pour le Commerce Exterieur (COFACE) is a government corporation that provides export insurance to cover commercial, political, exchange rate fluctuation and inflation risks. In 1981, both Vallourec and Pont a Mousson purchased commercial risk insurance from COFACE.

We have information indicating that, while COFACE showed an overall profit, its overall insurance activities operated at a deficit.

Revenues from financial and real estate investments allowed COFACE to offset the operating deficit on insurance. However, in 1981, the commercial risk program did not suffer any losses. In addition, premiums for COFACE's commercial risk insurance program exceeded claims against the program. Therefore, we preliminarily determine that COFACE export insurance for commercial risk does not confer a subsidy with respect to exports to the United States.

C. Local Business Tax Deductions

Under the direction of the French tax authority ("Direction Generale des Imports"), all French industries are eligible for reductions of local business taxes ("taxe professionelle") for the

purpose of creating new jobs. Vallourec has received tax reductions in 1981.

Inasmuch as this program is available to all industrial sectors and not specific to any particular region in France, we preliminarily determine that no countervailable benefit exists.

D. Research and Development Assistance

Both Vallourec and Pont a Mousson reported receiving a small amount of funding for R & D projects from the French government. Three government organizations which provide R & D funding to French steel companies are:

- Agence Nationale de Valorisation de la Recherche (ANVAR): a public corporation which is designed to support innovation and enhance research;
- Direction Generale de la Recherche Scientifique et Technique (DGRST): a subdivision of the Ministry of Research and Technology; and
- Agence de l' Informatique (ADI): a public corporation which promotes the use of computer technology.

Information indicates that R & D funding is not awarded on a regional or industry-specific basis, and research results are made publicly available. Therefore, we preliminarily determine that the amounts received through these programs do not confer subsidies within the meaning of the Act.

E. Tax Relief on Investments

Pont a Mousson has reported receiving both investment tax deductions and investment tax credits under the following three French laws: (1) No. 75–408, dated May 29, 1975, which provided a 10% tax deduction on industrial investments; (2) No. 79–525, dated July 3, 1979, which provided tax credits equal to 10% of the increase in expenditures for investment; and (3) No. 81–1160, dated December 30, 1981, which provided tax credits equal to 10% of the cost of investments.

Inasmuch as these tax credits and deductions are available to all industrial sectors and not specific to any particular regions in France, we preliminarily determine that no countervailable benefit exists.

F. Regional Anti-Pollution Agencies

Created by Law No. 64–1245 of 1964, these regional agencies known generically as "Agences Financières de Bassin" provide incentives for the installation of anti-pollution devices. We have information which indicates that these anti-pollution incentives are generally available and do not benefit a specific group of industries. Therefore, we preliminarily determine that no countervailable benefit is bestowed.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs which are listed in the notice of "Initiation of Countervailing Duty Investigation" are not used by the manufacturers, producers, or exporters of the products subject to this investigation.

A. Preferential Financing—Fonds de Developpement Economique et Social (FDES)

Created by the French Parliament in 1955, FDES is a fund which provides loans to businesses and corporations in order to further the French government's economic, social, industrial, and regional development objectives.

Based upon our investigation, we preliminarily determine that neither Vallourec nor Pont a Mousson had any FDES loans outstanding in 1981.

B. Preferential Financing—Groupement de l'Industrie Siderurgique (GIS)

GIS was founded in 1946 as a corporation whose sole shareholders were 45 steel companies. The purpose of GIS was to raise money for capital projects of the steel companies. By floating debt instruments in the public marketplace, GIS raised monies to lend to the companies at a rate equal to the rate being paid on bonds issued to the public, plus operating expenses. No loans have been issued by GIS since 1978.

Based upon our investigation, we preliminarily determine that neither Vallourec nor Pont a Mousson had any GIS loans outstanding in 1981.

C. Preferential Financing—Specialized Financial Institutions

A number of private, cooperative financial institutions emerged after World War II to raise capital for various sectors of French industry. By floating bond issues, these cooperative institutions raised capital and made loans to their member companies, including steel companies. Since 1978, none of these institutions has floated bonds or loaned funds to the steel industry. These institutions include:

- Groupement Interprofessionnel Financier Antipollution (GIFIAP): environmental protection;
- Groupement pour le Financement de la Region de Fos (GIFOS): development of the Fos area near Marseille;
- Groupement des Industries de Materiaux de Construction (GIMAT): construction materials;
- Groupement pour le Financement des Economies d'Energie (GENERCO): energy conservation;
- Groupement d'Equipement pour le Traitement des Minerais de Fer (GETRAFER): processing of iron ore.

Based upon our investigation, we preliminarily determine that neither Vallourec nor Pont a Mousson had any loans outstanding from these financial institutions in 1981.

D. The 1978 Rescue Plan

By 1978, the French steel industry had been experiencing severe financial difficulties for a number of years. In September 1978, the government of France instituted a major recapitalization and restructuring program for the steel industry, hereinafter referred to as the "Rescue Plan."

The primary financial goal of the restructuring was the reduction of certain steel companies' debt service burden. This was accomplished in three ways: interest refunds, forgiveness of debt, and conversion of loans into "soft" loans of special characteristics ("Prets a Caracteristiques Speciales" or PACS.)

Neither Vallourec nor Pont a Mousson were included in the Rescue Plan and received no benefits resulting from it.

For a more detailed description of the Rescue Plan, refer to the notice of "Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France" (47 Fed. Reg. 39332).

E. Assistance to Coal Suppliers

Neither Vallourec nor Pont a Mousson use coke or coking coal for the production of raw steel, nor do they produce the carbon steel sheet and plate used in the manufacture of the welded pipe and tube products under investigation. Therefore, we preliminarily determine that neither company has benefited from any assistance programs which may have benefited the coal industry.

For a more detailed description of the assistance programs to coal suppliers, refer to the notice of "Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France" (47 Fed. Reg. 38332).

F. Tax Exemptions and Assistance for Land Purchases

Petitioners alleged that Vallourec may have benefited from a program through which it purchased land at reduced prices, and received exemptions from value-added taxes on the purchase of the land and equipment.

We find no evidence indicating Vallourec's participation in any government programs of this nature.

G. Funding for Infrastructure

Petitioners alleged that Vallourec may have benefited from a program by which the French government provided funding for infrastructure such as road, port, rail and communication facilities at Vallourec's Dunkirk pipe mill.

We find no evidence indicating Vallourec's participation in any government programs of this nature.

H. European Coal and Steel Community (ECSC) and European Investment Bank (EIB) Loans, Loan Guarantees and Interest Rebates

Neither Vallourec nor Pont a Mousson reported any loans, loan guarantees, or interest rebates outstanding through any of the above mentioned programs in 1981.

For a detailed description of these programs, refer to Appendix 3 to this notice.

I. ECSC Funds for Research and Development

Neither Vallourec nor Pont a Mousson reported the receipt of any funds from the ECSC for any research and development projects in 1981.

For detailed description of ECSC R & D programs, refer to Appendix 3 to this notice.

J. ECSC Labor Programs

Neither Vallourec nor Pont a Mousson reported the receipt of funds from the ECSC for labor assistance in 1981.

For a complete description of ECSC labor programs refer to Appendix 3 to this notice.

K. Regional Development Incentives

The government of France provides a series of tax and non-tax regional incentives to French and foreign businesses to establish new, or to expand existing, businesses in certain French regions.

The Delegation a l'Amenagement du Territoire et l'Action Regionale (DATAR) coordinates the programs of various government agencies and ministries. For incentive purposes, France is divided into four zones. Each zone, or part of a zone, is eligible for different types or levels of assistance. The assistance includes development grants, non-industrial grants, research and development grants, decentralization indemnities, and job training subsidies.

We have no evidence that DATAR provided any benefits to the steel companies involved in this investigation.

L. Special Fund for Industrial Adaptation

Petitioners alleged that French steel companies received grants and preferential loans through the Fonds Special d'Adaptation Industrielle (FSAI). FSAI was established in 1978 to promote job creation and industrial diversification in the steel, textile, shipbuilding and coal regions of France.

We have no evidence that the steel companies included in this investigation received benefits from FSAI.

M. Early Retirement and Layoff Benefits

French corporations have certain statutory and contractual obligations to pay severance to their employees in case of interruption of cessation of employment. There are several French government early retirement plans designed to compensate for the effects of mass layoffs.

We have no evidence that the steel companies included in this investigation received benefits under these program..

IV. Programs For Which Additional Information is Needed

A. Export Credit Insurance—Political and Exchange Risk

For a general description of COFACE programs, refer to the section entitled "Export Credit Insurance—Commercial Risk" in this notice.

In 1981, both Vallourec and Pont a Mousson purchased from COFACE coverage against the fluctuation of the exchange rates between the french franc and the U.S. dollar. In addition, during that same period Pont a Mousson purchased COFACE coverage against political risk on its sale to the United States.

We will seek additional information on the profitability of COFACE's political risk and exhange rate risk programs.

B. Export Credits

In France, commercial banks may, upon endorsement from the Banque Francaise du Commerce Exterieur (BFCE), rediscount loans issued for export financing. After receiving a BFCE guarantee, the Bank of France will rediscount a portion of the outstanding credit instrument at an interest rate equal to the discount rate in effect at that time. The balance of the outstanding credit instrument is then financed by the commercial banks at their normal lending rate. When combined, the Bank of France discount rate and the commercial bank lending rate result in a "blended rate" which is below the commercial benchmark for comparable loans in the year of issue.

In 1981, some sales to U.S. customers of the product under investigation, manufactured by both Vallourec and Pont a Mousson, were financed with export credits. The funds for those credits were provided by a pool of French commercial banks to the U.S. customers.

We will seek clarification on the composition of the pool of French commercial banks extending the export credits in order to determine the extent to which the French government is involved in the financing schemes. In addition, we will seek information from the U.S. customers on the specific terms of the export credits to determine whether a countervailable benefit has been bestowed.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

Summary of Preliminary Benefits

We preliminarily determine that benefits which do not constitute subsidies within the meaning of the countervailing duty law are being provided to the manufacturers, produces, or exporters in France of large diameter welded carbon steel pipes and tubes in the following amounts:

[In percent]

Manufacturer/producer/exporter	Ad valorum rate
Vallourec	0.024
Pont a Mousson	.332

However, because these net subsidy rates are *de minimis*, our preliminary countervailing duty determination is negative.

ITC Notification

In accordance with section 703(e) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on November 1, 1982 at the U.S. Department of Commerce, Room 3104, 14th and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's

publication. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 25, 1982. Oral Presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.43, within thirty days of this notice's publication, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

October 4, 1982.

Appendix 1: Description of Product

For purposes of this investigation: the term *"large diameter welded carbon steel pipes and tubes"* covers welded carbon steel pipes and tubes with walls not thinner than 0.065 of an inch, of circular cross section and over 16 inches in outside diameter, as currently provided for in items 610.3211 and 610.3251 of the *Tariff Schedules of the United States Annotated (TSUSA).* Pipes and tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feedwater heaters, or conforming to A.P.I. specifications for oil well tubing, with or without couplings, cold-drawn pipes and tubes and cold-rolled pipes and tubes with wall thickness not exceeding 0.1 of an inch are *not included.*

Appendix 2: Methodology

Several basic issues are common to many of the countervailing duty investigations of large diameter welded carbon steel pipes and tubes, initiated by the Department of Commerce (the Department) on June 3, 1982; *e.g.*, government assistance through grants, loans, equity infusions, loss coverage, research and development projects, and labor programs. This appendix describes in some detail the general prinicples applied by the Department when dealing with these issues, as they arise within the factual context of these cases.

Grants

Petitioner alleged that respondent foreign steel companies have received numerous grants for various purposes. Under section 771(5)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1677(5)(B)), domestic subsidies are countervailable where they are "provided or required by government action to a *specific* enterprise or industry, or group of enterprises or industries" (emphasis added).

It has been argued that $100 million today is much more valuable to a grant recipient than $10 million per year for the next 10 years, since the present value (the value in the initial year of receipt) of the series of payments is considerably less than the amount if initially given as a lump sum. We agree with this position. As long as the present value (in the year of grant receipt) of the amounts allocated over time does not exceed the face value of the grants, we are consistent with both our domestic law and international obligations in that the amount countervailed will not exceed the total net subsidy.

The present value of any series of payments is calculated using a discount rate. We have determined that the most appropriate discount rate for our purposes is the "risk-free" rate as indicated by the secondary market rate for long-term government debt (in the home country of the company under investigation). The basic function of the "present value" exercise is to allocate money received in one year to other years. Domestic interest rates perform this function within the context of an economy. The foundation of a country's interest rate structure is usually its government debt interest rate (the risk-free rate). All other borrowings incorporate this risk-free rate and add interest overlays reflecting the riskiness of the funded investment.

When we allocate a subsidy over a number of years it is not the intention of the Department to comment on or judge the riskiness of the project undertaken with the subsidized funds, nor to evaluate the riskiness of the company as a whole. We do not intend either to speculate how a project would have been financed absent government involvement in the provision of funds. Rather, we simply need a financial mechanism to move money through time so as to accurately reflect the benefit the company receives. We believe that the best discount rate for our purposes is one which is risk free and applicable to all commercial actors in the country. Therefore we have used in these final determinations long-term government debt rates (as reflected in the secondary market) as our discount rates.

The legislative history of Title VII of the Act states that where a grant is "tied" to—that is, bestowed specifically to purchase—costly pieces of capital equipment, the benefit flowing from the grant should be allocated in relation to the useful life of that equipment.

The subsidy is allocated in equal nominal increments over the entire useful life, since money tomorrow is less valuable than money today, thus the subsidy is effectively front loaded. For these steel investigations we have allocated a grant over the useful life of equipment purchased with it when the value of that grant was large (in these investigations, greater than $50 million) and specifically tied to pieces of capital equipment. Where the grant was small (generally less than one percent of the company's gross revenues and tied to items generally expensed in the year purchased, such as wages or purchases of materials), we have allocated the subsidy solely to the year of the grant receipt. We construe that a grant is "tied" when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy. All other grants—the vast majority of those involved in these investigations—are allocated over 15 years, a period of time reflecting the average life of capital assets in integrated steel mills. The 15-year figure is based on Internal Revenue Service studies of actual experience in integrated mills in the U.S. Furthermore, we understand that a 15-year period is a common useful life adopted in some of the countries involved in these investigations for steel capital equipment. We are using this time period because we sought a uniform period of time for these allocations and this was the best available estimate of the average steel asset life worldwide. We could not calculate the average life of capital assets on a company-by-company basis, since different accounting principles, extraordinary write-offs, and corporate reorganizations yielded extremely inconsistent results.

Loans and Loan Guarantees for Companies Considered Creditworthy

In these investigations, various loan activities give rise to subsidies. The most common practices are the extension of a loan at a preferential interest rate where the government is either the actual lender or directs a private lender to make funds available at a preferential rate, or where the government guarantees the repayment of the loan made by a private lender. The subsidy is computed by comparing what a company would pay a normal commercial lender in principal and interest in any given year with what the company actually pays on the preferential loan in that year. We determine what a company would pay a normal commercial lender by constructing a comparable commercial loan at the appropriate market rate (the benchmark) reflecting standard commercial terms. If the preferential loan is part of a broad, national lending

program, we used a national average commercial interest rate as our benchmark. If the loan program is not generally available—like most large loans to respondent steel companies—the benchmark used instead, where available, is the company's actual commerical credit experience (*e.g.*, a contemporaneous loan to the company from a private commercial lender). If there were no similar loans, the national commercial loan rate is used as a substitute rate. Finally, where a national loan-based interest rate was not available, an average industrial bond rate was used as best evidence.

For loans denominated in a currency other than the currency of the country concerned in an investigation, the benchmark is selected from interest rates (either national or company-specific, as apporpriate) applicable to loans denominated in the same currency as the loan under consideration (where possible, rates on loans in that currency in the country where the loan was obtained; otherwise, loans in that currency in other countries, as best evidence). The appropriate discount rate remains the risk-free rate as indicated by the secondary market rate for long-term debt obligations of the company's home country government. The subsidy for each year is calculated in the foreign currency and converted at an exchange rate applicable for each year.

After calculating the payment differential in each year of the loan, we then calculated the present value of this stream of benefits in the year the loan was made, using the risk-free rate (as described in the grants section of this appendix) as the discount rate. In other words, we determined the subsidy value of a preferential loan as if the benefits had been bestowed as a lump-sum grant in the year the loan was given. This amount was then allocated evenly over the life of the loan to yield the annual subsidy amounts. We did so with one exception: where the loan was given expressly for the purchase of a costly piece of capital equipment, the present value of the payment differential was allocated over the useful life of the capital equipment concerned.

For loans not tied to capital equipment with mortgage-type repayment schedules, this methodology results in annual subsidies equivalent to those calculated under the methodology previously employed by the Department whereby we considered the difference in total repayments in each year of a loan's lifetime to be the subsidy *in that year.* For loans with costant principal repayments (*i.e.*, declining total repayments), loans with deferral of repayments, and loans for costly capital equipment, the present value method results in even allocations of the subsidy over the relevant period. This effectively front loads countervailing duties on these loan benefits in the same manner as grants are front loaded.

A loan guarantee by the government constitutes a subsidy to the extent the guarantee assures more favorable loan terms than for an unguaranteed loan. The subsidy amount is quantified in the same manner as for a preferential loan.

If a borrowing company preferentially received a payment holiday from a government lending institution or from a private lender at government direction, an additional subsidy arises that is separate from and in addition to the preferential interest rate benefit. The subsidy value of the payment holiday is measured in the same manner as for preferential loans, by comparing what the company pays versus what is would pay on a normal commercial loan in any given year. A payment holiday early in the life of a loan can result in such large loan payments near the end of its term that, during the final years, the loan recipient's annual payments on the subsidized loan may be greater than they would have been on an unsubsidized loan. By reallocating the benefit over the entire life of the loan through the present value methodology described above, we avoid imposing countervailing duties in excess of the net subsidy. Where we have sufficient evidence that deferment of principal is a normal and/or customary lending practice in the country under consideration, then such deferral has not been considered as conferring an additional subsidy.

Coal Assistance

As explained in detail in the September 7, 1982 notice of "Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany" (47 FR 39345), we analyzed and verified aspects of the German coal subsidy program as it applied to steel. Based upon the verified information in the records of those investigations, we determined that this particular program does not confer a countervailable benefit on either non-German or German steel producers.

As we stated in some of the preliminary determinations on Certain Steel Products reached on June 10, 1982 (47 FR 26309), benefits bestowed upon the manufacturer of an input do not flow down to the purchaser of that input if the sale is transacted at arm's length. In an arm's length transaction, the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear.

The application of these principles to sales of German coal outside Germany is as follows. The records of these transactions show that the prices charged for subsidized German coal outside Germany certainly do not undercut the freely available market prices. Therefore, non-German purchasers of subsidized German coal do not benefit from german coal subsidies.

In support of this conclusion, we note that if non-German steel procedures did benefit from German coal subsidies, they would attempt to purchase German coal rather than unsubsidized coal from other sources including the U.S., since there are no restrictions on their ability to do so. The fact that they purchase significant amounts of unsubsidized U.S. coal indicates that the subsidies on German coal do not flow to non-German coal consumers.

Moreover, it is extremely unlikely that the German government would significantly subsidize non-German coal consumers unless compelled to do so by obligations with respect to the European Communities. Since there is no evidence of such obligations, we conclude that the German government is not in fact subsidizing non-German coal consumers.

For these reasons, we determine that non-German steel producers do not benefit from subsidization of German coal.

Research and Development Grants and Loans

Grants and preferential loans awarded by a government to finance research that has broad applications and yields results which are made publicly available do not confer subsidies. Programs of oranizations or institutions established to finance research on problems affecting only a particular industry or group of industries (*e.g.*, metallurgical testing to find ways to make cold-rolled sheet easier to galvanize) and which yield results that are available only to producers in that country (or in a limited number of countries) confer a subsidy on the products which benefit from the results of the research and development (R&D). On the other hand, programs which provide funds for R&D in a wide range of industries are not countervailable even when a portion of the funds is provided to the steel sector.

Once we determine that particular program is countervailable, we calculate the value of the subsidy by reference to

the form in which the R&D was founded. An R&D grant is treated as an "united" grant; a loan for R&D is treated as any other preferential loan.

Labor Subsidies

To be countervailable, a benefit program for workers must give preferential benefits to workers in a particular industry or in a particular targeted region. Whether the program preferentially benefits some workers as opposed to others is determined by looking at both program eligibility and participation. Even where provided to workers in specific industries, special welfare programs are countervailable only to the extent that they relieve the firm of costs it would ordinarily incur—for example, a government's assumption of a firm's normal obligation partially to fund worker pensions.

Labor-related subsidies are generally conferred in the form of grants and are treated as untied grants for purposes of subsidy calculation. Where they are small and expensed by the company in the year received, we likewise allocated them only to the year of receipt. However, where they were more than one percent of gross revenues, we allocated them over a longer period of time, generally reflecting the program duration.

Appendix 3: Programs Administered by Organizations of the European Communities

I. The ECSC

On April 8, 1965, the three separate European communities—the European Coal and Steel Community ("ECSC"), the European Economic Community ("EED") and the European Atomic Energy Community—signed a treaty to merge into the European Communities (EC"). Article 9 of the merger treaty established the Commission of the European Communities to take the place of the High Authority of each of the formerly independent institutions. The merger became effective in 1967.

The ECSC was established by the Treaty of Paris in 1951 to modernize production, improve quality, and assure a supply of coal and steel to the member countries. The Treaty of Paris governs all programs intended directly to affect the steel industry. Funds for these programs flow from two sources: (1) ECSC borrowings on international capital markets, and (2) the ECSC budget.

A. ECSC Programs Determined to be Subsidies

1. *ECSC Loan Guarantees.* Under Article 54 of the Treaty of Paris, the ECSC is authorized to guarantee loans from commercial lenders to coal and steel companies. Since these guarantees are intended specifically for the steel industry, we find the resulting benefits to be countervailable. The countervailable benefit is the difference between the interest rate charged by private lenders to commercial customers in the ordinary course of business and the rates available with an ECSC loan guarantee.

2. *Programs Funded Through ECSC Borrowings.* Because of its quasi-governmental nature, the ECSC is able to raise funds at interest rates lower than those which would be available on commercial terms to European steel companies. When the ECSC relends these borrowed funds to a company without increasing the interest rate, any difference between the lower rate passed on and the rate otherwise available to the steel company in the commercial financial market (the "benchmark") is a benefit to the company. For this reason, we preliminarily determine that ECSC loans raised through capital market funding are countervailable insofar as they offer preferential interest rates (i.e., rates which would not be available on commercial terms) to steel companies. Consequently, any loan to a steel company involving ECSC funds borrowed on international capital markets, provided under an ECSC assistance program, confers countervailable benefits to the extent that the loan is made at a preferential interest rate.

a. *ECSC Industrial Investment Loans.* Article 54 of the Treaty of Paris authorizes the ECSC to provide loans to steel companies in member countries for reducing production costs, increasing production, or facilitating product marketing. Loans provided under this program are funded exclusively from ECSC borrowings on world capital markets. For the reasons discussed above, we preliminarily determine that this program confers countervailable benefits to loan recipients to the extent that the interest rates are preferential.

b. *ECSC Industrial Reconversion Loans.* Under Article 56 of the Treaty of Paris, the ECSC provides loans to companies or public authorities for investments in new non-steel ventures in regions of declining steel industry activity. The goal of the loan program is to provide employment for former steel workers in new industires. To the extent that such industrial reconversion loans are made for steel production, they confer benefits on steel production generally, or possibly on particular types of steel products if the loans were tied. Since this program is funded exclusively from ECSC borrowings on world capital markets, we have preliminarily determined that these loans to steel producers confer subsidies on steel to the extent that the interest rates are preferential.

3 *Programs Funded Through the ECSC Budget.* With respect to programs funded by the ECSC budget, we have information which verified the following facts about the composition of the ECSC budget.

—From 1952, through 1956, the ECSC budget was financed exclusively through producer-generated levies.
—From 1971 through 1977, the ECSC budget was financed exclusively through producer-generated levies, funds generated from unexpended levies, and other relatively small amounts obtained from steel companies (*e.g.,*) fines and late payment fees).
—Beginning in 1982, the member state contribution is to be used exclusively to fund one particular program, rehabilitation aid provided under Article 56 of the Treaty or Paris.

We continue to believe that programs funded by the ECSC budget through 1977 do not confer countervailable benefits.

However, since 1978 member state contributions have constituted a portion of the ECSC budget. Upon consideration of this information, for the years 1978–1981, we believe it is reasonable to assume that programs funded by the ECSC budget are subsidized to the extent that the budget derives from member state contributions. To assume to the contrary (i.e., that *all* program assistance derives from levies and levy-generated funds, and that member state contributions are used *exclusively* for expenses other than program assistance) is inappropriate unless member state contributions are expressly earmarked for particular programs. Accordingly, we have treated as a subsidy in 1981 a proportion of the benefits received under programs funded by the ECSC budget.

Although not relevant to the subsidies being determined and measured in these investigations, we note that for 1982, member state contributions have been so earmarked for one particular program: rehabilitation aid provided under Article 56 of the Treaty of Paris. If all member state contributions are expended in funding that program, other programs would then be funded by levies and levy-generated funds, not from member state contributions.

a. *ECSC Labor Assistance and Rehabilitation Aids.* Under Article 56 of

the Treaty of Paris, the ECSC provides matching grants to member states for programs that assist former steel workers currently unemployed or in training for a new trade. We have information which verifies that some of this assistance has been provided to retrain workers for other jobs in other industries and to cover some worker unemployment and early retirement expenses for which the employing companies were not legally responsible. Where such assistance has been provided to retrain steel workers for new steel jobs, and/or to cover unemployment and early retirement expenses which steel companies would normally be required to pay, then it benefits the steel industry. To that extent, it is considered a subsidy.

This program is funded from the ECSC budget. In view of the relatively small amounts concerned, we are expensing this assistance in the year it was received. Therefore, for purposes of this investigation, we are capturing only assistance provided in the period for which we are measuring subsidies (generally 1981). In 1982, member state contributions accounted for 20.05% of the ECSC budget. Therefore, for the reasons discussed above, 20.05% of the assistance under Article 56 provided to steel companies for programs benefiting steel production in 1981 constitutes a subsidy on the manufacture or production of steel.

b. *ECSC Interest Rebates.* (1) Certain Article 54 industrial investment loans qualify for further interest reduction depending on whether they are for environmental projects, removal of industrial bottlenecks, promotion of steel industry competitiveness, or stabilization of coal production. The rebates generally reduce the interest expense for the first five years of the loan repayment schedule by three percentage points. The interest rebates are paid out of the ECSC budget.

(2) Certain Article 56 industrial reconversion loans qualify for further interest reductions. Like the interest rebates on Article 54 industrial investment loans, these rebates are paid out of the ECSC budget. In a few instances the underlying loans made under Article 56 benefit the products under investigation. Most Article 56 loans were given to non-steel ventures. For the reasons discussed above, we have preliminarily determined that both these programs described under (1) and (2) above confer countervailable benefits to the extent that the ECSC budget in the year concerned is financed by member state contributions. In view of the relatively small amounts concerned, we are expensing this assistance in the year it was received. Therefore, we are capturing only assistance provided in the period for which we are measuring subsidies (generally 1981). In 1981, member state contributions accounted for 20.05% of the ECSC budget. Therefore, for the reasons discussed above, 20.05% of the assistance provided in 1981 constitutes a subsidy on the manufacture or production of steel.

c. *ECSC Coal and Coke Aids.* Petitioner has alleged that ECSC assistance to coal producers in EC countries constitutes an indirect benefit to steel producers purchasing that coal.

We have verified information that, in fact, certain ECSC coal aids are bestowed exclusively on coking coal, which is used primarily by the iron and steel industry. Nonetheless, we continue to believe, for other reasons, that the ECSC coking coal aids do not confer a countervailable benefit on the manufacture or production of steel. We have no evidence that ECSC-assisted coking coal is sold to ECSC steel companies at prices less than the prices for other freely available coking coal produced in ECSC member countries but not assisted by the ECSC, or for freely available coking coal produced outside ECSC member countries. To the contrary, we have verified information that some coking coal is sold in Europe at prices below the prices of ECSC-assisted coking coal. This indicates that the coking coal subsidies to coal producers are not being passed along, in whole or in part, to steel producers purchasing that coal in arm's length transactions.

Where a subsidized coal producer and a steel producer are related companies, it is reasonable to question whether, in fact, the transfer price for coking coal is established on an arm's length basis. In general, our tests for whether the prices for coking coal charged to a related company were established on an arm's length basis include: (1) whether the coal producer sold to its related steel producer at the prevailing price, and/or (2) whether the coal producer sold to its related steel producers and all other purchasers of coking coal at the same price.

B. ECSC Programs Determined Not To Confer Subsidies

1. *ECSC Housing Loans for Workers.* Article 54(2) of the Treaty of Paris authorized the ECSC to provide loans for residential housing for steel workers. In some cases these loan funds are provided directly to steel companies which relend them to their workers. In other cases, they are administered through financial institutions or housing authorities. These loans for the construction or purchase of homes are at highly concessionary one percent interest rates.

The preferential ECSC housing loans provide substantial benefits directly to steel workers. We do not believe that such aid relieves the employer steel companies of certain labor wage costs.

In many of the countries concerned there is a high rate of unemployment, which reduces upward pressure on wages. Moreover, we have found no instance in which wage rates varied—depending upon the presence or absence of these mortgage loans to steel workers—either within a steel company or between steel companies. Since we have no firm basis for determining that the wage demands of steel workers would be responsive to the (non)availability of this mortgage subsidy, we conclude that the hypothetical benefits to the employing companies are too remote to be considered subsidies to these companies.

2. *ECSC R&D Grants and Loans.* a. Article 55 of the Treaty of Paris provides funding in the form of grants for up to 60 percent of an R&D project's cost. The projects must be for improvements in the production and use of coal and steel.

We have preliminarily decided to consider ECSC budget-funded programs as countervailable to the extent that the ECSC budget for the year concerned is financed by member state contributions. Nevertheless, because we have evidence that the results of the R&D are made publicly available, we have determined that this program does not confer countervailable benefits.

b. With respect to ECSC R&D loans—also made under Article 55 of the Treaty of Paris—we have information which indicates that the results of the research are made publicly available. Therefore, we determine that ECSC R&D loans do not confer countervailable benefits.

II. The European Investment Bank

The European Investment Bank ("EIB") was created by the Treaty of Rome establishing the EEC to fund projects that serve regional needs in Europe. Article 130 of the Treaty of Rome authorized the EIB to make loans and guarantee financial projects in all sectors of the economy. These projects include the provision of funds to further the development of low-income regions. Funds are drawn from debt instruments floated on world capital markets and from investment earnings. Because EIB loans are designed by charter to serve regional needs, we find them to be

countervailable where the interest rate is less than the rate which would have been available commercially from a private lender without government intervention.

The EIB also provides loan guarantees to companies in EC member countries. Again, because this guarantee was available in some but not all regions, it is regarded as a countervailable benefit.

III. The European Regional Development Fund

The European Regional Development Fund was established by the EC to provide funding in the form of low-interest loans for industrial projects designed to correct regional imbalances within the EC. The fund also awards interest subsidies on EIB loans.

We preliminarily determine that this program is not used by any of the manufacturers, producers or exporters of the product from countries under investigation.

[FR Doc. 82-27942 Filed 10-8-82; 8:45 am]
BILLING CODE 3510-25-M

Preliminary Negative Countervailing Duty Determination: Large Diameter Welded Carbon Steel Pipes and Tubes From the Federal Republic of Germany

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary negative countervailing duty determination.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are not being provided to manufacturers, producers, or exporters in the Federal Republic of Germany (FRG) of large diameter welded carbon steel pipes and tubes, as described in the "Scope of Investigation" section of this notice. If the investigation proceeds normally, we will make our final determination by December 17, 1982.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C. 20230, telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary determination

Based upon our investigation, we preliminarily determine that these is no reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in the FRG of large diameter welded carbon steel pipes and tubes, as described in the "Scope of Investigation" section of this notice.

For purposes of this investigation, we preliminarily determine that while the following programs are preliminarily determined to confer benefits to Mannesmannroehren-Werke AG and Hoesch Rohr AG, the estimated net benefit to each manufacturer is *de minimis*, and therefore, not countervailable.

- ECSC loans.
- ECSC rehabilitation assistance.
- State investment grants.

Case History

On May 13, 1982, we received a petition from United States Steel Corporation filed on behalf of the U.S. industry producing large diameter welded carbon steel pipes and tubes. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in the FRG of the steel product listed above.

We found the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 3, 1982 we initiated a countervailing duty investigation (47 FR 24170). We stated that we expected to issue a preliminary determination by August 2, 1982. We subsequently determined that the investigation was "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination for 65 days until October 4, 1982 (47 FR 11738).

Since the FRG is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. On June 21, 1982 the ITC determined that there is a reasonable indication that these imports are materially injuring or threatening to materially injure a U.S. industry.

We presented questionnaires concerning the allegations to the Delegation of the Commission of the European Communities and to the government of the FRG in Washington, DC. On August 15, August 25, and September 2, 1982, we received the responses to the questionnaires. A supplemental response was received on August 27, 1982.

Scope of Investigation

The product covered by this investigation is:

- Large diameter welded carbon steel pipes and tubes

The product is fully described in Appendix 1 which appears with the notice of "Preliminary Negative Countervailing Duty Determination: Large Diameter Welded Carbon Steel Pipes and Tubes From France," in this issue of the **Federal Register.**

Mannesmannroehren-Werke AG (Mannesmann) and Hoesch Rohr AG (Hoesch), a division of Hoesch Werke AG, are the only known producers and exporters in the FRG of the subject product which is exported to the United States. The period for which we are measuring subsidization is the calendar year 1981.

Analysis of Programs

Throughout this notice, general principles and conclusions of law applied by the Department of Commerce to the facts of the current investigation concerning large diameter welded carbon steel pipes and tubes are described in detail in Appendices 2 and 3, which appear with the notice of "Preliminary Negative Countervailing Duty Determination: Large Diameter Welded Carbon Steel Pipes and Tubes From France." Unless otherwise noted, we allocated each company's countervailable benefits as follows:

- Where benefits were provided to all steel production, they were allocated over the value of all steel sales of the company receiving the benefit;
- Where benefits were provided to pipes and tubes, they were allocated over the value of those products.

Based upon our analysis of the petitions and responses to our questionnaires, we determine the following.

I. Programs Preliminarily Determined To Confer Benefits

We preliminarily determine that benefits are being provided under the programs listed below to manufacturers, producers, or exporters in the FRG of large diameter welded carbon steel pipes and tubes included in this investigation.

A. ECSC Loans

For the reasons described in Appendix 3, we determine that ECSC loans from borrowings by the ECSC on world capital markets confer benefits to the extent that they are made at preferential rates.

To calculate the benefit we used the loan methodology described in

Appendix 2. The benchmark used is the corporate bond yield reported by the Organization for Economic Co-operation and Development (OECD) based on the currency in which the loan was denominated. The rate was the best available in the absence of any published, long-term rates for commercial loans. We allocated the benefits over the value of each company's total steel sales.

Companies Receiving Benefits:

Hoesch

Under this program we calculated an *ad valorem* benefit rate of 0.025 percent for Hoesch.

Mannesmann

Under this program we calculated and *ad valorem* benefit rate of 0.020 percent for Mannesmann.

B. ECSC Rehabilitation Assistance

As described in Appendix 3, grants from the ECSC under this program are used to assist the resettlement and retraining of steelworkers within and outside the steel industry as well as to provide some unemployment and early retirement aids. Information furnished by Hoesch indicates that it received funds for the retraining of workers within the steel industry. We will obtain further information about Hoesch's receipt and use of ECSC grants. For the reasons described in Appendix 3, we preliminary determine that the grants to Hoesch confer countervailable benefits to the product under investigation where they relieve respondents of expenses they would ordinarily incur in the normal course of business. We are countervailing 20.05 percent of the grants bestowed to Hoesch in 1981 because 20.05 percent of the ECSC budget for 1981 was financed by government contributions.

We allocated the benefit for each company across the value of that company's total steel sales. Because we considered that the grant was used for an item which is relatively small and is normally expensed in the year received, we allocated the entire amount to the year of receipt (described in Appendices 2 and 3).

Company Receiving Benefits:

Hoesch

Under this program we calculated an *ad valorem* benefit rate of 0.014 percent for Hoesch.

C. State Investment Grants

The state of North Rhine-Westphalia (NRW) provided funding to Hoesch to build a continuous coil feeder. This machinery is used for the continuous production of pipes and tubes. We have preliminarily determined that this program confers benefits on the product under investigation because the allocation of state funds for the program appears to be industry specific.

Since the continuous coil feeder is used directly in pipe and tube production, we allocated the subsidy across the value of the company's total pipe and tube sales. The methodology for calculating the benefit value of grants is described in Appendix 2. The benefits are allocated over a 15-year period, because the amount of the funding was well under $50 million.

Company Receiving Benefits:

Hoesch

Under this program we calculated an *ad valorem* benefit rate of 0.002 percent for Hoesch.

II. Programs Preliminarily Determined Not To Confer Subsidies

We preliminarily determine that the FRG government is not providing subsidies to manufacturers, producers or exporters of large diameter welded carbon steel pipes and tubes under the following programs.

A. Federal Programs

1. *Federal Ministry of Research and Technology (BMFT).* The BMFT funds projects for research and development in the areas of energy and environmental protection; information and production technologies; aerospace technology, medicine and biology. In 1976 the Ministry established a Raw Materials and Technology Program under the Directorate General for Energy and Environmental Protection. This program is administered by the Kernforschungsanlage Juelich (KFA), a private organization, on the behalf of the BMFT.

The KFA examines applications for research and development projects under the Raw Materials and Technology Program and reports to the BMFT on the technical value and costs of the proposed projects. Companies, university institutes and research installations may apply for these funds. The BMFT decides whether to grant funds for research based on the recommendation of the KFA.

The KFA, as the project manager, is in charge of disbursing funds, monitoring the projects' technical progress and examining the interim and final research reports. An evaluation report on the progress and results of all projects is prepared by the KFA for the BMFT. The iron and steel industry has participated in a number of R & D projects funded by the BMFT.

In previous investigations ("Final Affirmative Countervailing Duty Determinations, Certain Steel Products From the Federal Republic of Germany" (47 Fed. Reg. 39345)), we determined that BMFT funds are not allocated by industrial sector, but by area of general research applicability. In our previous investigations we found that the portion of BMFT funds going to the iron and steel industry was insignificant in comparison with total BMFT disbursements.

Moreover, the equipment purchased is used exclusively in the Mannesmann Research Institute and is not used in a production capacity. Therefore, we preliminarily find this not to confer a countervailable benefit under the Act.

2. *Investment Premium Act—Articles 4, 4a, and 4b.* Benefits under articles 4, 4a, and 4b of the Investment Premium Act are available to domestic producers throughout the FRG for research and development projects, for investments in energy production and distribution and for the general promotion of capital investments.

The eligibility requirements stated in FRG administrative regulations do not extend preferential treatment to any specific industry or group of industries or a particular geographic region. Since benefits under this program appear to be generally available on equal terms to all industries in the FRG, we preliminarily determine that payments under this program are not countervailable.

3. *Loans From Credit Institutions Controlled by the FRG.* The Kreditanstalt fur Weideraufbau was established as part of the National Recovery Program after World War II. This credit institution is approximately 80 percent owned by the FRG and 20 percent owned by various political subdivisions of the FRG. The bank offers long-term commercial development loans to industries at interest rates lower than those available on comparable commercial loans. This institution makes loans available without regard to specific industries or regions. Therefore, we do not find benefits it may confer to be subsidies on the product under investigation within the meaning of the Act.

4. *European Recovery Program (ERP).* This program began with the Marshall Plan for the postwar rehabilitation of Western Europe. ERP funds are reserved exclusively for industrial rehabilitation and promotion. The source of funds for this program is a system of principal and interest repayments from Marshall Plan loans. A committee, which includes members of the government, directs the allocation of ERP funds according to the

guidelines of the ERP Special Fund. These guidelines, adopted annually, state eligibility criteria, application procedures and use of ERP funds. The terms and conditions of ERP loans are published in the Federal Journal. Hoesch has received benefits under this program.

The Department has verified information that ERP funds are disbursed to all branches of industry and that no specific industry, group of industries or industries in a particular region are the main beneficiaries of these funds. Therefore, we have preliminarily determined that this program does not confer benefits which constitute subsidies within the meaning of the Act.

5. *Labor Assistance.* Article 54 of the Labor Promotion Act of 1969 provides FRG steel companies with labor assistance as part of a national manpower policy. This Article provides employers with loans for costs incurred for training hard-to-place employees.

Benefits received pursuant to this program are available on equal terms to all industries in the FRG regardless of location or sector. Therefore, we have preliminarily determined these benefits not to constitute subsidies within the meaning of the Act.

6. *Federal Environment Agency, Umweltbundesamt (UBA).* The UBA manages federal government funds which can be provided as reimbursement for up to 50 percent of a company's investment in air pollution equipment. The investment must be for a demonstration project and the technology must be transferable to comparable existing facilities.

We have preliminarily determined that UBA pollution control funds do not confer countervailable benefits since these funds are generally available on equal terms, and we have no evidence that the steel industry in the FRG is a major beneficiary of this program.

B. State Programs.

1. *North Rhine-Westphalia—Research and Development.* We have knowledge of an "Action Program for the Ruhr District" sponsored by the state government of NRW. This program is funded entirely by the NRW government. The "Technology Program Steel," a sub-program of the Action Program, provides R & D funds to projects with innovative features. All projects and the funding levels are publicly announced. Any reports generated by the project and any patents that result from technological innovations must also be publicly announced and made publicly available.

Our present understanding of NRW's R & D program leads us to find that the funds disbursed do not constitute a subsidy within the meaning of the Act since all project results are made publicly available.

2. *North Rhine-Westphalia—Pollution control grants.* The state of NRW provides partial funding for installing pollution control equipment through direct grants to firms whose plants need to meet new environmental standards.

While the program is open to firms in any industry with pollution problems, applicants must demonstrate the financial ability to undertake these projects.

We have preliminarily determined that this program does not confer benefits which constitute subsidies on the product under investigation because the allocation of state funds for the programs is generally available on equal terms to industries located in the state of NRW.

C. ECSC Research and Development Programs

Article 55 of the Treaty of Paris provides funding in the form of grants for up to 60 percent of an R & D project's cost. The projects must be for improvements in the production and use of coal and steel.

The Department has evidence that the results of the R & D projects are made publicly available. Additionally, the research results of projects for which companies receive ECSC R & D loans made under Article 55 of the Treaty of Paris are also made publicly available. Since the results of research conducted under these programs are publicly available, we preliminarily determine that the benefits do not constitute subsidies within the meaning of the Act.

D. Federal Coal Production Assistance

The FRG provides production assistance to producers of coking coal used by the iron and steel industry. In recent prior investigations, we found that benefits bestowed upon the manufacturer of an input do not usually flow down to the purchaser of that input if the sale is transacted at arm's length (see *e.g.*, "Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium" (47 FR 26309)). In an arm's length transaction, the seller generally attempts to maximize its total revenue by charging as high a price and selling as large a volume as the market will bear.

The issue of sales of FRG coal within the FRG is more complicated for two reasons: (1) The FRG government restricts the importation of coal into the FRG; and (2) some FRG steel producers are related to Ruhrkohle, the major subsidized coal producer. With respect to the coal import restrictions, the issue is whether the comparison of prices for FRG coal and prices for non-FRG coal remains valid if FRG manufacturers cannot ordinarily buy non-FRG coal. But for the import restrictions, FRG purchasers of subsidized FRG coal would not be considered subsidized themselves unless the price of FRG coal undercuts the market price of coal.

In recent previous investigations ("Final Affirmative Countervailing Duty Determinations, Certain Steel Products From the Federal Republic of Germany" (47 FR 39345)), we were advised formally by the government of the FRG that the restrictions on the importation of coal into the FRG are inseparably linked with the benefits paid to the FRG coal industry; and that the present restrictions on importation of coal would not exist in the absence of such benefits to the coal industry so long as the cost of producing coal in the FRG remains significantly above world market price levels. As the FRG government has clearly stated, "It is not possible to discontinue the payment of assistance (to the coal industry) and maintain the ban on imports at the same time." To do so "would burden the FRG steel industry with the competitive disadvantages raised by difficult conditions in the FRG coal deposits as well as with the costs of FRG coal."

The coal subsidies and coal import restrictions are thus part and parcel of a comprehensive program designed to assist the FRG coal industry, from which FRG steel producers receive no benefits. In fact, the FRG steel producers are thereby prevented from buying coal at world prices, and required to pay a slight premium. Production assistance to the FRG coal industry benefits that industry alone and doe not operate to benefit the manufacture or production of steel.

Since we conclude no benefit exists, under any reasonably foreseeable conditions, restrictions on the purchase of coal by FRG steel producers cannot properly be viewed as an offset impermissibly used in calculating net subsidies to FRG steel producers. The offset issue simply does not arise since, on the basis of verified information currently available to us, there is no "gross subsidy" (from which an "offset" would occur) to the FRG steel producers resulting from FRG subsidization of coal.

As previously noted, the other complication of the issue of sales of FRG coal within the FRG is the fact that some FRG steel producers are related to

Ruhrkohle, the subsidized FRG coal producer. Based on the verified facts of previous investigations ("Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany" (47 FR. 39345)), we conclude that even FRG coal consumers related to Ruhrkohle do not benefit from FRG subsidization of coal. In the first place there appears to be no price discrimination within the FRG between sales to purchasers related to Ruhrkohle and unrelated purchasers. Therefore, the fact of relationship does not detract from the arm's length nature of the transfer price. Second, even though the establishment in 1969 of Ruhrkohle, a government-supported entity, may have relieved the steel companies of certain costs and financial liabilities they would have incurred in closing the mines taken over by Ruhrkohle, the effect of these benefits was dissipated prior to the period for which we are measuring subsidies. Finally, we note that the FRG steel producers have consistently opposed the requirement to continue to operate the FRG coal mines and to by FRG coal. We conclude that if the related FRG steel producers were benefiting from the FRG government's comprehensive plan to subsidize coal and restrict imports, they would not be so opposed.

Clearly then, the structure of the German coal subsidy system is such as to restrict any benefits to the coal industry itself and provide no advantages to purchasers of FRG coal, wherever located. If any broader benefits flow from the subsidies in FRG coal, such benefits apply equally to all consumers in the world, including the U.S. steel industry. Such subsidies may operate to increase worldwide supply relative to worldwide demand and thereby lower the world market price of coal on a uniform basis for all coal purchasers. This universal benefit cannot be viewed as a subsidy to one coal purchaser vis-a-vis another such purchaser.

For the above reasons, we have preliminarily determined that FRG steel producers unrelated to Ruhrkohle do not benefit from production assistance paid to producers of coking coal used by the iron and steel industry; and that FRG steel producers related to Ruhrkohle do not benefit from coking coal production assistance.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs which are listed in the notice of "Initiation of Countervailing Duty Investigation" are not used by the manufacturers, producers, or exporters of the product subject to this investigation.

A. Investment Premium Act—Articles 1, 2, and 3

Domestic investors building new, or expanding existing, operations in certain regions of the FRG receive cash reimbursements from the FRG tax authority based on a percentage of capital investment costs. These reimbursements are available to industries situated in the "zonal border areas" adjacent to the German Democratic Republic, as well as other areas which are economically depressed. Under the Investment Premium Act investors have a legal claim to reimbursements once the eligibility requirements are satisfied. In principle, all industries meeting the requirements receive the reimbursements and no industrial sector in the regions covered by the Investment Premium Act Benefits more than any other. Articles 1, 2, and 3 of the Investment Premium Act limit assistance to regions with depressed economic structures. Neither of the firms being investigated is eligible for funds under these provisions because they are not located in regions which are subject to these provisions.

B. Joint Scheme: Improvement of Regional Economic Structure

This Joint Scheme combines equal portions of federal and state funds that are provided by the budgets of those two levels of government. The funds are used to reimburse companies for capital investment costs up to certain ceilings, usually between 10 and 25 percent of investment costs. Neither of the companies being investigated has received benefits under this program.

C. Federal Sales Assistance

In addition to the FRG coking coal production assistance described above in the Federal Coal Production Assistance section, some FRG steel producers receive rebates of a portion of the cost of transporting coal to their facilities. The information provided by respondents indicates that they did not receive funds under this program.

D. ECSC Interest Rebates

The petitioners alleged that certain Article 54 industrial investment loans and certain Article 56 industrial reconversion loans qualify for further interest reductions. However, neither of the firms being investigated has recevied benefits under either of these programs.

Programs for Which Additional Information Is Needed

At this time we do not have enough information to make a determination regarding possible subsidization through the programs listed below:

- Investment grants for capital investment in the iron and steel industry.
- MInistry of Defense—research and technology projects.
- Capital Levy Bank—"Last enausgleichsbank".
- State Credit Bank.
- Credit offices of the states.
- State coal assistance.
- ECSC coal and coke aids.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in making our final determination.

Summary of Preliminary Benefits

We have preliminarily determined that benefits which do not constitute subsidies within the meaning of the countervailing duty law are being provided to the manufacturers, producers, or exporters in the FRG of large diamete welded carbon steel pipes and tubes in the following amounts:

Manufacturer/Producer/Exporter	Ad-valorem rate (percent)
Mannesmannroehen-Werke AG	0.020
Hoesch Rohr AG, a division of Hoesch Werke AG	0.041

These net benefit rates are *de minimis* and therefore the preliminary determination is negative.

ITC Notification

In accordance with section 703(e) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on November 1, 1982 at the U.S. Department of Commerce, Room 3104, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address

and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by October 25, 1982. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

October 4, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-27944 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, Commerce.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), will meet to discuss the Surf Clam/Ocean Quahog and Bluefish Fishery Management Plans (FMP's); discuss the status of other FMP's; discuss joint ventures and other fishery management and administrative matters.

DATES: The public meetings will convene on Wednesday, November 10, 1982, at approximately noon and will adjourn on Thursday, November 11, 1982, at approximately 5 p.m. The meetings may be lengthened or shortened depending upon the progress made on the agenda.

ADDRESS: The public meetings will take place at the Best Western Airport Motel, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674-2331.

Dated: October 5, 1982.

Jack L. Falls,

Chief, Administrative Support Staff, National Marine Fisheries Service.

[FR Doc. 82-27984 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Modification No. 1 to Permit No. 392

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 392 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on August 30, 1982 (47 FR 38960), is modified to include La Jolla Cove as an authorized location of the research.

Accordingly, Section B-1 of Permit No. 392 is deleted and replaced by:

"1. This research effort shall be conducted by the means and for the purposes set forth in the application. Activities may be conducted in the San Miguel Island and La Jolla Cove areas."

This modification becomes effective upon publication in the **Federal Register.**

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 5, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-27982 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Modification of Permit

On October 18, 1977, notice was published in the **Federal Register** (42 FR 55630) that a Permit had been issued to Dr. Albert Erickson, University of Washington, Seattle, Washington. The Permit is modified as follows:

Section B-6 is modified by substituting the following:

B-6. This Permit is valid with respect to the taking authorized herein until December 31, 1987.

This modification is effective on the date of publication of this Notice in the **Federal Register.**

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

Dated: October 5, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-27981 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Modification of Permit

On May 14, 1981, Notice was published in the **Federal Register** (46 FR 26673), that a Permit had been issued to the Ocean World Inc., 17th Street Causeway, Fort Lauderdale, Florida 33316. The Permit is modified as follows:

Section B-2 is modified by substituting the following:

"B-2. This Permit is valid with respect to the taking authorized herein until December 31, 1984."

This modification is effective on the date of publication of this Notice in the **Federal Register.**

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: October 6, 1982.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 82-27983 Filed 10-8-82; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; New Routine Use

AGENCY: Commodity Futures Trading Commission.

ACTION: Amendment of routine use established under the Privacy Act of 1974.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has amended one of the routine uses established by the Commission pursuant

to the Privacy Act of 1974 explicitly to allow the disclosure to a registered futures association of information contained in any of the Commission's systems of records.

DATE: The new routine use is effective on October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Assistant Chief Counsel, Division of Trading and Markets, 2033 K Street N.W., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a) generally restricts an agency's dissemination of information concerning an individual. 5 U.S.C. 552a(b). The Privacy Act, however, authorizes the disclosure of records relating to individuals if that disclosure is made pursuant to a "routine use" [1] which has been adopted by the affected agency. 5 U.S.C. 552a(b)(3). Pursuant to this authority, the Commission has established eight routine uses which are applicable to each of its systems of records [2] and an additional routine use which applies solely to the Commission's two systems of records which contain registration applications and related information.[3]

The Commission recently proposed to amend one of those already-existing routine uses to provide that information contained in any of the Commission's systems of records may be given to a futures association registered with the Commission pursuant to Section 17 of the Commodity Exchange Act (7 U.S.C. 21) if the Commission has reason to believe that such disclosure will assist the association in carrying out its responsibilities under that Act. 47 FR 33530 (August 3, 1982).

The Commission received two comments on its proposal. Both commentators, while agreeing generally with the Commission's proposal, were concerned that information provided to a registered futures association by the Commission might not be subject to some of the safeguards of the Privacy Act. In particular, the commentators requested that the Commission endeavor to establish appropriate safeguards to insure that any such material will not be disclosed in response to third party requests or subpoenas.

In this regard, the Commission expects recipients of information from the Commission's systems of records—including a registered futures association as well as the contract markets and securities industry self-regulatory organizations—to recognize the potentially sensitive nature of such information and, in appropriate cases, to take such steps as may be necessary to preserve the confidentiality of that information. The Commission's experience with disclosures pursuant to the routine uses already established under the Privacy Act, however, has not convinced it that any further measures are necessary at this time.

Furthermore, the Privacy Act does not restrict the dissemination of information from an agency's systems of records if the disclosure is "pursuant to the order of a court of competent jurisdiction." 5 U.S.C. 552a(b)(11). Thus, the Commission cannot itself assert the Privacy Act as a defense to a subpoena for information from the Commission's systems of records. As a result, even if the Commission were generally to restrict the use of information that had originally been provided by the Commission, the recipient of that information would nonetheless be required—as is the Commission—to furnish that material in response to a judicial order.

One of the commentators noted, however, that legislation now pending in Congress would amend Section 8a(6) of the Commodity Exchange Act to authorize the Commission to provide a registered futures association and the exchanges with information concerning market transactions and operations, notwithstanding the provisions of Section 8 of that Act. That legislation would simultaneously mandate that "any [such] information furnished by the Commission * * * shall not be disclosed by such contract market [or] registered futures association * * * except in any self-regulatory action or proceeding." Section 104 of H.R. 5447; Section 3(e) of S. 2109. Although "Section 8 material" is not necessarily coextensive with that which is protected by the Privacy Act,[4] the Commission believes that the pending legislation should obviate the commentators' principal concerns.[5]

The Commission has therefore determined to revise the third of its eight general routine uses.[6] The text of that routine use, as amended herein, is set forth below:

(3) The information may give to any board of trade designated as a contract market by the Commission or to any futures association registered with the Commission, if the Commission has reason to believe this will assist the contract market or registered futures association in carrying out its responsibilities under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, and may be given to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

Issued in Washington, D.C., on October 6, 1982.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 82-28011 Filed 10-8-82; 8:45 am]

BILLING CODE 6351-01-M

[1] The Privacy Act defines the term "routine use" to mean, with respect to the disclosure of a record, "the use of such record for a purpose compatible with the purpose for which it was collected." 5 U.S.C. 552a(a)(7).

[2] These routine uses were most recently published in conjunction with the annual notice of the existence and character of systems of records maintained by the Commission. 47 FR 43759, 43760-61 (October 4, 1982).

[3] *Id* at 43766, 43771; *see* 47 FR 19575 (May 6, 1982).

[4] Section 8(a) of the Commodity Exchange Act generally limits the Commission's ability to disclose "data and information that would separately disclose the business transactions or market positions of any person and trade secrets and names of customers." 7 U.S.C. § 12(a). The Privacy Act, by comparsion, relates only to the disclosure of information pertaining to individuals. *See, e.g.*, 5 U.S.C. 552(a)(4) (definition of "record").

[5] Of course, until such time as appropriate legislation is enacted, a registered futures association would not be authorized to recieve Section 8 material. *See* 47 FR 33530, 33531 (August 3, 1982).

[6] *See* 47 FR 43759, 43761 (October 4, 1982).

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 28, 1982.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group will meet at Wright-Patterson Air Force Base, Ohio, Room 222, Building 14, Area B on November 2 and 3, 1982. The purpose of the meeting will be to review selected programs and projects relating to the missions of the Aeronautical Systems Division and the Air Force Wright Aeronautical Laboratories. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. each day.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8845.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-27870 Filed 10-8-82; 8:45am]

BILLING CODE 3910-01-M

Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(2)(a) of the Federal Advisory Committee Act (Pub. L. 92–463) notice is hereby given of a meeting of the Coastal Engineering Research Board.

The meeting will be held in the conference room of the Wilmington Hilton, 301 N. Water Street, Wilmington, N.C. from 8:30 a.m. to 4:30 p.m. on 30 November and from 8:30 a.m. to 12:30 p.m. on 2 December.

The 30 November session will be devoted to presentations and discussions by the Corps of Engineers' Wilmington District staff on: Wilmington District Coastal Area and General Program; Overview of Oregon Inlet Project, Barrier Island Studies and Shore Processes; Dredging Studies; Storm Tide Levels—Pamlico Sound; Geotechnical Investigation and Analysis; Jetty Structural Tests/Design and Constructibility; Wave Penetration between Jetties; Sloping Float Transportable Breakwater; Overview of Environmental Studies/Considerations; Cape Hatteras Lighthouse Protection; Military Ocean Terminal, Sunny Point; and field trip itinerary.

The entire day of 1 December will be an aerial inspection along the coast from Wilmington, N.C. to Oregon Inlet, N.C., including overflight of District projects including Sunny Point, Ft. Fisher, Wrightsville Beach, Morehead City Harbor, Cape Lookout Lighthouse, Cape Hatteras Lighthouse, Oregon Inlet and by government vehicle to the Field Research Facility at Duck, N.C.

The morning of 2 December will be devoted to discussions of the field inspection; Actual Environmental Effects of Dredging, DMRP Outputs and DOTS; South Atlantic Division Research Needs, and CERB Recommendations.

Participation by the public is scheduled for 9:00 a.m. on 2 December. Members of the public may attend the field inspection but must provide their own transportation.

The entire meeting is open to the public subject to the following:

(1) Since seating capacity of the meeting room at the Wilmington Hilton is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

(2) Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Ted E. Bishop, Executive Secretary, Coastal Engineering Research Board, Kingman Building, Fort Belvoir, VA 22060.

Dated: September 13, 1982.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

[FR Doc. 82-27864 Filed 10-8-82; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Discretionary Grant Programs; Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1983 Applications

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of certain fiscal year 1983 applications.

SUMMARY: The purpose of these application notices is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for awards under certain programs administered by the Department of Education.

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

The budget estimates in the individual application notices are based on the President's budget request for Fiscal Year 1983 and are subject to enactment by the Congress.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of Applications:

Applications for new projects must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

If an application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail:

Applications must be addressed to the Department of Education Application Control Center, *Attention:* (insert appropriate CFDA Number), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant for a new project will be notified that its application will not be considered.

Applications Delivered by Hand

Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:30 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

PART I—PROGRAMS LISTED IN CHRONOLOGICAL ORDER

CFDA	Program	Closing date
84.072 84.061 84.062	Indian education—noncompeting continuations.	December 6, 1982
84.005	College library resources—new projects.	December 15, 1982
84.060	Indian education grants to local educational agencies and tribal schools—new and noncompeting continuations.	December 22, 1982
84.087	Indian education fellowships for Indian students—noncompeting continuations.	December 30, 1982
84.072 84.061 84.062	Indian education—new projects.	January 4, 1983.

84.072, 84.061, 84.062—Indian Education

Closing Date

December 6, 1982—Noncompeting continuations.

Applications are invited for noncompeting continuation projects under the following Indian Education Act programs:

(1) *Part A—Indian-Controlled Schools.* Grants may be made to Indian tribes, Indian organizations, and local educational agencies (LEAs) that will have been LEAs for not more than three years as of the beginning of the proposed project period for Indian-controlled schools projects. Schools must be operated for Indian children and be located on or near a reservation. Authority for this program is contained in Section 303(b) of Part A of the Act.

(20 U.S.C. 241bb(b))

The purposes of these projects are (a) to plan for and establish Indian-controlled schools and (b) to support enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in those schools. It is estimated that there will be $2,445,097 to support 16 noncompeting continuation grantees.

An application under this program must be marked Attention: 84.072

(2) *Part B—Educational Services for Indian Children.* Grants may be made to State educational agencies (SEAs), LEAs, Indian tribes, Indian organizations, and Indian institutions for educational services projects. Authority for this program is contained in Section 1005(c) of Part B of the Act.

(20 U.S.C. 3385(c))

The purposes of these projects are (a) to provide to Indian children educational services that are not available to those children in sufficient quantity or quality; and (b) to introduce innovative and exemplary approaches into the education of Indian children. It is estimated that there will be $1,193,400 to support 6 noncompeting continuation grantees.

An application under this program must be marked Attention: 84.061.

(3) *Part B—Planning, Pilot, and Demonstration Projects for Indian Children.* Grants may be made to SEAs, LEAs, elementary and secondary schools for Indian children supported by the Department of the Interior, Indian tribes, Indian organizations, and Indian institutions for planning, pilot, and demonstration projects. Authority for this program is contained in Section 1005(b) of Part B of the Act.

(20 U.S.C. 3385(b))

The purpose of these projects is to develop, test, and demonstrate the effectiveness of educational methods, approaches, or techniques to improve educational opportunities for Indian children. It is estimated that there will be $2,101,709 to support 14 noncompeting continuation grantees.

An application under this program must be marked Attention: 84.061

(4) *Part B—Educational Personnel Development (Section 1005(d)).* Grants may be made to institutions of higher education, and to SEAs and LEAs in combination with those institutions for educational personnel development projects. Authority for this program is contained in Section 1005(d) of Part B of the Act.

(20 U.S.C. 3385(d)

The purpose of these projects is to prepare educators of Indian people. The maximum stipend allowed for participants at the graduate level will be $600 per month. The maximum stipend allowed for participants at the undergradate level will be $375 per month. A maximum allowance of $90 per month will be allowed for each dependent. It is estimated that there will be $1,249,600 available to support 9 noncompeting continuations.

An application under this program must be marked Attention: 84.061.

(5) *Part B—Educational Personnel Development (Section 422).* Grants may be made to institutions of higher education, Indian tribes, and Indian organizations for educational personnel development projects.

Authority for this program is contained in Section 422 of Part B of the Act.

(20 U.S.C. 3385a)

The purpose of these projects is to prepare educators of Indian people. The maximum stipend allowed for participants at the graduate level will be $600 per month. The maximum stipend allowed for participants at the undergraduate level will be $375 per month. A maximum allowance of $90 per month will be allowed for each dependent. It is estimated that there will be $1,150,169 available to support 8 noncompeting continuations.

An application under this program must be marked Attention: 84.061.

(6) *Part C—Educational Services for Indian Adults.* Grants may be made to Indian tribes, Indian organizations, and Indian institutions for educational service projects. Authority for this program is contained in Part C of the Act.

(20 U.S.C. 1211a(b)

The purpose of these projects is to improve educational opportunities for Indian adults. It is estimated that there will be $1,433,630 available to support 10 noncompeting continuations.

An application under this program must be marked Attention: 84.062.

(7) *Part C—Planning, Pilot, and Demonstration Projects for Indian Adults.* Grants may be made to SEAs, LEAs, Indian tribes, Indian organizations, and Indian institutions for planning, pilot, and demonstration projects. Authority for this program is contained in Part C of the Act.

(20 U.S.C. 1211a(a)(1)(2))

The purpose of these projects is to develop, test, and demonstrate the effectiveness of educational methods, approaches, or techniques to improve employment and educational opportunities for Indian adults. It is estimated that there will be $1,242,083 available to support 11 noncompeting continuations.

An application under this program must be marked Attention: 84.062.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by December 6, 1982.

Application Forms

Application forms and program information packages may be obtained by writing to Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to these programs include the following:

(a) Regulations governing the Indian Education Act programs, 34 CFR Parts 250, 252–253, and 255–259.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78.

Further Information

For further information, contact Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245–8840.

(20 U.S.C. 241bb(b), 3385, 3385a, and 1211a)

84.005—College Library Resources Program

Closing Date

December 15, 1982.

Applications are invited for grants under the College Library Resources Program for Fiscal Year 1983.

Authority for this program is contained in Part A of Title II of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1021 *et seq.*)

Under this program the Secertary may award a grant to an institution of higher education, a branch of an institution of higher education, a combination of these institutions, or any other public or private nonprofit library institution whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis.

The purpose of these grants is to assist institutions of higher education and other public and private nonprofit library institutions to improve the quality of their library resources, including law library resources, and to encourage libraries of institutions of higher education to share their resources through the establishment and maintenance of networks.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand delivered by December 15, 1982.

Program information

Grant awards will not exceed $10,000. To be considered for a grant, an applicant must provide an assurance that it will meet the maintenance of effort requirement for library materials or request a waiver of that requirement, as set forth in the regulations. To ensure consideration for a grant, an applicant must be certified as eligible by January 14, 1983, by the Department of Education's Division of Eligibility and Agency Evaluation.

Available funds

For Fiscal Year 1983, the Department of Education has not requested funds for the College Library Resources Program. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated. There are no multi-year awards under this program.

In Fiscal Year 1982 grant funds were awarded to 2,280 institutions either directly or through joint applications. With a Fiscal Year 1982 appropriation of almost $2,000,000, each institution received an average of $840. However, the U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages will be mailed to all fiscal Year 1982 applicants.

Application forms may also be obtained by writing to the Library Education, Research and Resources Branch, Attn: II–A, U.S. Department of Education (Room 3622, ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the instructions and forms included in the program package. A narrative is required to explain a request of the waiver of the maintenance-of-effort requirement or to describe networking activities if either is applicable. The Secretary urges that all narratives be as brief as possible.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the College Library Resources Program, (34 CFR Part 773); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

Further Information

For further information contact Frank A. Stevens or Beth Phillips Fine, Library Education, Research and Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3622, ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245–9530.

(20 U.S.C. 1021 *et seq.*)

84.060—Indian Education Grants to Local Educational Agencies and Tribal Schools

Closing Date

December 22, 1982—New Projects and Noncompeting Continuations.

Applications are invited for new and noncompeting continuation projects under the Indian Education Act program of entitlement grants to local educational agencies (LEAs) and tribal schools.

Authority for this program is contained in Part A of the Indian Education Act, as amended (20 U.S.C. 241aa–241ff).

This program authorizes grants to LEAs and to certain Indian Tribes and Indian organizations described in Section 1146 of Pub. L. 95–561.

The purpose of these grants is to support elementary and secondary school programs designed to meet the special educational and culturally related academic needs of Indian children.

Closing Date for Transmittal of Applications

An application for new awards and noncompeting continuations must be mailed or hand delivered by December 22, 1982.

Available Funds

It is estimated that there will be $32,241,000 available for this program. The amount of each grant is based on a formula that takes into account the Indian student enrollment in the applicant's schools and the average per pupil expenditure of school districts in the applicant's State.

Application Forms

Application forms and program information packages may be obtained by writing to Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 25 pages. The Secretary further suggests that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing programs under Part A of the Indian Education Act, 34 CFR Parts 250 and 251; and

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further Information

For further information, contact Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-8840.

(20 U.S.C. 241aa-241ff)

84.087—Indian Education Fellowships for Indian Students

Closing Date

December 30, 1982—Noncompeting Continuations.

Applications are invited for noncompeting continuation fellowships under the Indian Education Act—Indian Fellowship Program. This program authorizes the award of fellowships to Indian students.

Authority for this program is contained in Section 423 of the Indian Education Act as amended.

(20 U.S.C. 3385b)

The purpose of the awards is to enable Indian students to pursue courses of study leading to: (a) Graduate level degrees in education, medicine, law, and related fields and (b) graduate or undergraduate degrees in engineering, business administration, natural resources, and related fields.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, fellows should mail or hand deliver their applications by December 30, 1982.

Available Funds

It is estimated that the entire $1,000,000 appropriated for the Fellowship Program will be used to support 133 continuation awards. If funds become available for new awards, a notice will be published at a later date. The maximum stipend allowed for a graduate fellow will be $600 per month. The maximum stipend allowed for an undergraduate fellow will be $375 per month. A maximum allowance of $90 per month will be allowed for each dependent. Financial need and the applicant's resources will be taken into account in determining the amount of the fellowship award. The amount of the award will be determined by income of the student, the income of the student's spouse, family contributions, other financial aid including grant awards being received, and the cost of living of the area of the institution being attended.

An application under this program must be marked 84.087.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant.

Application Forms

Application forms and program information packages may be obtained by writing to Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations.

Regulations applicable to this program are the regulations governing the Indian Fellowship Program, 34 CFR Part 263.

Further Information.

For further information, contact Dr. Bryan Gray, Indian Education Programs, Department of Education, Room 2177, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245-8840.

(20 U.S.C. 3385b)

84.072, 84.061, 84.062—Indian Education

Closing Date

January 4, 1983—New Projects.

Applications are invited for new projects under the following Indian Education Act programs:

(1) *Part A—Indian-Controlled Schools.* Grants may be made to Indian tribes, Indian organizations, and local educational agencies (LEAs) that will have been LEAs for not more than three years as of the beginning of the proposed project period for Indian-controlled schools projects. Schools must be operated for Indian children and be located on or near a reservation. Authority for this program is contained in Section 303(b) of Part A of the Act.

(20 U.S.C. 241bb(b)).

The purpose of these projects is to support enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in those schools.

Available Funds

It is estimated that there will be $3,224,000 available, of which approximately $2,445,097 will support 16 noncompeting continuation grantees. That will leave approximately $778,903 to support new projects under this announcement.

Last year (fiscal year 1982), awards under this program totaled $4,540,289. Of that amount, $1,963,485 was awarded to 17 of the 34 applicants for new projects. The 1982 awards ranged from $50,961 to $229,796.

An application under this program must be marked Attention: 84.072.

(2) *Part B—Planning, Pilot, and Demonstration Projects for Indian Children.* Grants may be made to SEAs, LEAs, and elementary and secondary schools for Indian children supported by the Department of the Interior, Indian tribes, Indian organizations, and Indian institutions for planning, pilot, and demonstration projects.

Authority for this program is contained in Section 1005(b) of Part B of the Act, 20 U.S.C. 3385(b).

The purpose of these projects is to develop, test, and demonstrate the effectiveness of educational methods, approaches, or techniques to improve educational opportunities for Indian children.

Available Funds

It is estimated that there will be $2,906,831 available, of which approximately $2,101,709 will support 14 noncompeting continuation grantees. That will leave approximately $805,122 to support new projects under this announcement.

Last year (fiscal year 1982), awards under this program totaled $3,945,497. Of that amount, $704,851 was awarded to 7 of the 37 applicants for new projects. The 1982 awards ranged from $73,000 to $131,590.

An application under this program must be marked Attention: 84.061.

(3) *Part C—Planning, Pilot, and Demonstration Projects for Indian Adults.* Grants may be made to SEAs, LEAs, Indian tribes, Indian organizations, and Indian institutions for planning, pilot, and demonstration projects. Authority for this program is contained in Part C of the Act.

(20 U.S.C. 1211a(a))

The purpose of these projects is to develop, test, and demonstrate the effectiveness of educational methods, approaches, or techniques to improve employment and educational opportunities for Indian adults.

Available Funds

It is estimated that there will be $1,931,370 available of which approximately $1,242,083 will support 11 noncompeting continuations. That will leave approximately $689,287 to support 8 new projects.

An application under this program must be marked Attention: 84.062.

The estimates provided above do not bind the U.S. Department of Education to a specific number of grants or the amount of any grant.

Closing Date for Transmittal of Applications

An application for a grant must be mailed or hand delivered by January 4, 1983.

Application Forms

Application forms and program information packages are expected to be ready for distribution by October 29, 1982. They may be obtained by writing to Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 25 pages. The Secretary further urges that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to these programs include the following:

(a) Regulations governing the Indian Education Act programs 34 CFR Parts 250, 252–253, and 255–259.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further Information

For further information, contact Dr. Bryan Gray, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–8840.

(20 U.S.C. 241bb(b), 3385, and 1211a)

Dated: October 6, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-27985 Filed 10-8-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore Sites, Livermore, California

This record of decision has been prepared pursuant to regulations of the Council on Environmental Quality (40 CFR Part 1505) and implementing procedures of the Department of Energy (DOE) (45 FR 20694).

Decision

The DOE will operate the Livermore sites at the present level of effort which is consistent with national security and defense policy. Evaluation of seismic hazards at the sites will continue, and upgrading of facilities has been and will continue to be undertaken, as necessary, to mitigate any hazards to the public from local earthquakes.

Project Description

The DOE Livermore sites consist of three physically separate locations—the Lawrence Livermore National Laboratory; the Sandia National Laboratories, Livermore; and the Lawrence Livermore National Laboratory, Site 300. The first two sites are located just east of Livermore, California, approximately 40 miles southeast of San Franciso. Site 300 is locate approximately 12 miles southeast of Livermore.

The sites are used for research in nuclear weapons development, experiments in magnetic and laser fusion, and research in nonnuclear energy. Site 300 is used as a nonnuclear high-explosives test site.

A detailed analysis of environmental impacts from operations of the sites is presented in the final environmental impact statement (EIS), DOE Livermore Sites (DOE/EIS–0028).

Description of Alternatives

The following alternatives were considered by DOE in reaching its decision:

1. *Operations in Approximately the Same Status* (No Action Alternative): This alternative involves the operation of the facilities at approximately their present level. The impacts associated with this alternative would be the continued use of land (thereby precluding other uses), the impacts associated with the presence of about 8,000 employees in the area, resource usage, radiation exposure potential (within guidelines), and the potential for accidents having offsite effects.

2. *Plant Shutdown and Decommissioning:* This alternative involves cessation of the weapons and energy research in support of national policy mandated by elected officials. Environmental effects of this alternative would involve decontamination and disposal of radioactive materials, some continued restrictions on land use, and a significant socioeconomic loss to nearby communities due to relocation.

3. *Total or Partial Plant Relocation:* This alternative provides for the transfer of activities to another location. Replacement costs of the facilities would exceed $1.5 billion. Transportation impacts from the move, and the associated risks, would be significant. Land acquisition, new utilities, services, and housing would require large additional expenditures, which would vary depending on the location selected. Of particular concern would be an unacceptable programmatic interruption; a site relocation would require several years during which time research and development would be adversely affected.

A partial relocation of the most critical facilities would move key operations to a remote area. This alternative would still require large expenditures for new facilities, utilities, etc., and has essentially the same adverse programmatic impacts. Ongoing operating and programmatic costs would be greater due to inherent inefficiencies in geographical separation of related activities.

4. *Scaling Down Certain Operations:* This alternative involves modifying those operations which have the greatest potential for adverse environmental impacts. However, programmatic needs dictate that this alternative is not always practical. Wherever possible, mitigation measures are being incorporated.

5. *Use of Alternate Technologies:* This alternative is simlar to the preceding one in that program requirements limit the choice of alternative technologies to the ones currently being employed. However, where possible, laboratory operations would utilize the most environmentally favorable technology. An important support function of the laboratories is developing improved techniques, and an important criterion is always minimization of environmental effects.

Basis for Decision

National defense policy requires a strong program of nuclear weapons research, development, and production. Congress and the President have mandated that these efforts continue

and have charged the DOE with that responsibility. In recent years, development of new sources of energy has also become a high priority. The Livermore sites provide essential research and development necessary to help meet the national needs for a nuclear weapons program and for basic energy research.

In view of these needs, shutdown and decommissioning of the Livermore facilities without transfer of their functions elsewhere is not a viable alternative. Placing the facilities on standby status would involve considerable costs, and inventories of hazardous materials would either have to be removed at some risk or the present level of safety systems and safety surveillance would have to be maintained.

Total or partial relocation of the facilities would reduce the risk of accidental release of hazardous materials at the Livermore sites by transferring the risks elsewhere, but the financial and other costs would be greater than warranted by the risk reduction. Other alternatives include change of operations within the sites to modify those activities having potential for the most adverse environmental impacts and using alternate technologies; both of these alternatives are controlled by the need to meet overall program goals and are being implemented insofar as possible.

Therefore, the DOE has decided to adopt the alternative of continued operation, with a commitment to improve facilities and operations as necessary, consistent with national defense, energy, and environmental goals.

Discussion of Environmentally Preferred Alternative

The environmentally preferred alternative would be shutdown and decommissioning of the facility without transfer of functions. There could be significant short-term adverse effects from such action, but long-term environmental effects would be positive. However, this alternative is not viable as long as national policy requires nuclear weapons and energy systems research and development capability.

Of the options available, continued operation incorporates all practicable means to avoid or minimize environmental harm. DOE and local and state agencies will continue monitoring programs at the Livermore sites, and proposed projects will be subject to environmental review.

Considerations in the Decision

Intensive seismic studies have been and are being carried out at the sites to verify the ability of critical facilities to withstand the maximum credible earthquake. These studies indicate that offsite effects will be minimal. However, if new information becomes available indicating a need, DOE is committed to a seismic upgrading program to protect employees and the public. In addition, an ongoing seismic upgrading program to strenthen noncritical facilities is underway with total projected costs expected to be approximately $10 million.

A study several years ago indicated a higher incidence of melanoma at the Lawrence Livermore National Laboratory than normally expected. However, no significant correlation has been found between working conditions at the Lawrence Livermore National Laboratory and the melanoma. Although ionizing radiation has been ruled out by a scientific review panel, the Lawrence Livermore National Laboratory is continuing four studies, and the State of California has been commissioned by DOE to do a fifth. The last of these studies will be completed in January 1984. The results of these studies will be made available to the public, and DOE will take whatever action is judged appropriate based on the information available.

Conclusion

The work performed at the DOE Livermore site is essential to the national need for research and development in the nuclear weapons program and other basic energy research. The decision is to operate the DOE Livermore site with a commitment to improve facilities and operations to reduce further environmental, health, and safety impacts, to the extent practicable.

Dated: September 29, 1982.

Herman E. Roser,

Assistant Secretary for Defense Programs.

[FR Doc. 82-27952 Filed 10-6-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. IN83-1-000]

Amoco Production Company, et al.; Order To Show Cause

Issued: October 5, 1982.

On February 28, 1977, Tenneco Inc. (Tenneco) filed a petition for declaratory relief (Docket No. CI77-298), regarding, among other things, the legality of certain sales of natural gas to Channel Industries Gas Company (Channel), an intrastate pipeline an wholly owned subsidiary of Tenneco Corp.[1] The subject gas was produced from acreage which had been dedicated, pursuant to certificated gas sales contracts, to Tennessee Gas Pipeline Company (Tennessee), the interstate pipeline division of Tenneco and a natural gas company under the Natural Gas Act (NGA).[2] Tenneco Corp. is a wholly owned subsidiary of Tenneco.

As CI77-298 proceeded to hearing, it became evident that the producers, Tenneco, and Channel engaged in acts and transactions which may have constituted both criminal and civil violations of the NGA and the Natural Gas Policy Act of 1978 (NGPA).[3] Because of the nature of the potential violations brought to its attention, the Commission directed the then Office of Enforcement (now the Enforcement Division of the Office of General Counsel, and referred to herein as Enforcement) to investigate the transactions pursuant to the Commission's Rules Relating to Investigations, 18 CFR Part 1b, and initiated IN79-3 by order issued January 29, 1979. At the same time, it suspended the CI77-298 proceeding. The Commission subsequently terminated CI77-298 by order issued December 10, 1980.[4]

With certain exceptions, the events and transactions which are the subject of IN79-3, and which were the subject of CI77-298, are pending before the Commission.[5] On the basis of its investigation, Enforcement has developed the following overall view of those events and transactions:

During the early 1960's, Tennessee found itself overcommitted with respect

[1] Tenneco Corp. is a wholly owned subsidiary of Tenneco.

[2] 15 U.S.C. 717 *et seq.* (Supp. III 1979).

[3] 15 U.S.C. 3301 *et seq.*

[4] For a detailed discussion of the reasons for the suspension and subsequent termination of CI77-298, see *Tenneco Inc., et al.*, Opinion No. 41 (June 13, 1979), and the Commission's December 10, 1980 order, 13 FERC ¶61,207.

[5] Pursuant to a Stipulation and Consent Agreement dated May 14, 1980, and filed in the United States District Court for the District of Columbia (C.A. No. 79-1638), Mobil Oil Corporation settled its involvement in the transactions at issue in CI77-298 and under investigation in IN79-3. On June 13, 1980, the Commission issued an order (11 FERC ¶61,281) terminating, as to Mobil, all civil matters in a number of proceedings before the Commission, including IN79-3. The Commission, by order of even date herewith, has approved settlements with Tenneco Inc., Sun Exploration and Development Company, and Atlantic Richfield Company. Accordingly, these companies are not included as respondents.

to its contractual obilgations to purchase gas. Whether by reason of alleged delay in the certification of expansion programs undertaken by Tennessee or by reason of its inability to otherwise market purchased gas, Tennessee was unable to "take" the minimum daily contract quantities of gas set forth in certain of its producer sales contracts. Indeed, during this period, Tennessee was among many interstate transmission companies incurring substantial "prepayment" costs as a result of contractual take or pay provisions.

In order to relieve its adverse take or pay situation, Tennessee attempted to renegotiate provisions within those contracts which required it to pay for the gas not taken. In large measure, it was successful in securing from its suppliers a modest reduction in minimum daily contract quantities and an extension of the period within which to "makeup" or take gas that had already been paid for. However, by the mid-60's, pressures to take additional volumes of gas (up to the authorized contract quantities) began to mount. For example, in 1963, Tennessee reached agreement with producers in the Seeligson Field Unit,[6] inculding some of the respondents herein, limiting the daily contract quantities Tennessee would take through 1965. At the same time, however, the producers notified Tennessee that beginning March 1966, their contractual right to require Tennessee to take greater daily contract quantities would be invoked.

It was against this background that Tennessee, in late 1964, applied for Commission authorization to abandon an under-utilized segment of its interstate pipeline system, which segment was to be known as the A–S Line.[7] Tennessee proposed to transfer ownership of the A–S Line, which lay south of and parallel to its mainline system, to its affiliate Channel for wholly intrastate operation. On January 12, 1965, the Commisson issued an order approving the abandonment of the A–S Line. Tennessee conveyed the line to Channel, and Channel commenced its operation in April 1965.

While these events were unfolding, producers under contract with Tennessee continued to apply pressure regarding the level of Tennessee's gas purchases. In response to these pressures, Tennessee entered into negotiations with these producers, and between 1965 and 1967, many of them, including some of the respondents herein, entered into contracts to sell natural gas to Channel. With few exceptions, the contracts between Channel and the producers were subordinate to the contracts between the producers and Tennessee.

The sales followed a few basic patterns, which purported to provide their legal justification: (a) Gas was sold to Channel pursuant to a "surplus" provision in the contract between the producer and Tennessee;[8] (b) gas was sold to Channel from reserves which the producer and Tennessee purported to remove contractually from dedication; (c) gas was sold to Channel in excess of the requirements of a contract between the producers and Tennessee; and (d) gas was sold to Channel after outright termination of a gas sales contract between Tennessee and the producer.

In no case did the producers make any Section 7(b) filings, and thus did not obtain Commission authorization for any abandonment of service to Tennessee resulting from these "surplus gas" sales to Channel. The "surplus gas" thus was produced from acreage dedicated to Tennessee, and most sales continued through 1973. When Tennessee went into curtailment in 1973, it began taking most of the gas the producers could deliver, and deliveries under most of the contracts with Channel were terminated. However, in some instances, Channel continued to purchase gas from the producers during the curtailment period (1973–1978), and some purchases are continuing to the present date.

Generally, the purchases by Channel after 1973 were at prices in excess of those which could have been obtained by the producer if the gas had been sold to Tennessee pursuant to the applicable rate schedule, or the maximum lawful price as established by the applicable area rate, by the national rate, or by the NGPA. From 1965 to the present time, over 450 Bcf of gas was sold to Channel by means of the transactions described above.

Enforcement believes the acts and transactions engaged in by the respondents, as described herein and as summarized in Appendix A, constitute violations of both the NGA and the NGPA. Further, Enforcement believes that Tennessee's interstate customers were harmed as a result of these transactions.

In addition, it appears that there may have been sales from dedicated acreage to intrastate purchasers other than Channel. However, the scope of such sales is not presently known, and Enforcement recommends that, if the Commission decides to set this matter for hearing, it give discretion to the Presiding Administrative Law Judge to include sales to other intrastate purchasers from the dedicated acreage at issue here as part of the same proceeding if the judge deems such inclusion appropriate.

At this time, the Commission takes no position with regard to the views formulated by Enforcement. The Commission neither makes findings of fact nor reaches conclusions of law with regard to the respondents, the transactions described herein, or the alleged violations set forth in Appendix A. However, the Commission does find it appropriate that this matter be set for hearing, for the respondents to show cause why they should not be held to have been in violation of the NGA and NGPA as a result of the transactions described herein and summarized in Appendix A. The respondents should also address whether and to what extent, if any, the interstate customers of Tennessee were harmed as a result of these transactions; what remedies, if any, should be ordered by the Commission; whether the Commission should permit the continuation of any of the intrastate sales to Channel described in Appendix A, and, if so, what legal procedures should be followed to permit such continuing intrastate sales.

The Commission finds

Good cause exists for requiring, and the public interest in administering the NGA and NGPA demands, that those respondents listed in Appendix A hereto show cause why they have not committed the violations set forth herein and in Appendix A, and why they should not be ordered to cease and desist from engaging in future conduct constituting such violations; and why the Commission should not order any and all appropriate remedial action, including but not limited to, disgorgement of any revenues obtained from sales of natural gas at prices in excess of the applicable maximum lawful price and payment of restitution for any harm to Tennessee's interstate customers.

Those respondents listed in Appendix A which desire to continue any of the intrastate sales of natural gas to Channel described in Appendix A should address the issue of whether the Commission should permit such continuing sales and, if so, what legal

[6] Of the gas fields at issue in IN79–3, the Seeligson Field involves the largest volumes of gas.

[7] Docket No. CP64–218.

[8] "Surplus gas" sales, in this context, refers to sales of natural gas pursuant to provisions in a producer's interstate pipeline contract which permit the producer to sell to third parties volumes in excess of specified quantities agreed upon by the producer and the interstate buyer.

procedures should be followed to permit such continuing sales.

The Commission orders

(A) The Commission investigation in Docket No. IN79–3 is hereby terminated.

(B) Those respondents listed in Appendix A hereto shall show cause why they have not committed the violations alleged herein and summarized in Appendix A; why they should not be ordered to cease and desist from any future conduct constituting such violations; and why the Commission should not order any and all appropriate remedies, including but not limited to disgorgement of any revenues obtained from sales of natural gas at prices in excess of the applicable maximum lawful price and payment of restitution for any harm to Tennessee's interstate customers.

(C) Those respondents listed in Appendix A which desire to continue any of the intrastate sales of natural gas to Channel described in Appendix A shall address the issue of whether the Commission should permit such continuing sales and, if so, what legal procedures should be followed to permit such continuing sales.

(D) Pursuant to Sections 4, 7, 15 and 16 of the NGA and Section 501 of the NGPA, and Rule 601 of the Commission's Rules of Practice (18 CFR 385.601), a prehearing conference shall be convened in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on November 15, 1982, at 10:00 a.m., Eastern Standard Time. Respondents should be fully prepared, as set forth in Rule 601(b) of the Commission's Rules of Practice (18 CFR 385.601(b)), to discuss any and all matters to be considered at the conference.

(E) An Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall preside at the prehearing conference in this proceeding, with authority to establish the hearing date, to establish and change procedural dates and to rule on motions, all as provided for in the Commission's Rules of Practice, 18 CFR Part 385. The designated Administrative Law Judge shall conduct the hearing pursuant to 18 CFR 385.501 *et seq.*, shall have all authority delegated by 18 CFR 385.504, and shall render a decision pursuant to 18 CFR 385.701.

(F) If the Administrative Law Judge shall determine that there is evidence of sales of natural gas to intrastate purchasers other than Channel from acreage covered by certificates of public convenience and necessity at issue in this proceeding, the judge may, in his discretion, expand the scope of this proceeding to place such sales appropriately at issue.

(G) Answers to this Order to Show Cause shall be filed in writing and under oath on or before November 5, 1982.

(H) Petitions for intervention shall be filed no later than November 5, 1982.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Appendix A

Respondents and Transactions and Alleged Violations

1. Amoco Production Company: Violations of section 4(a) and 7(b) of the NGA and violations of Section 104 of the NGPA and regulations thereunder for sales to Channel from the Riverside, O'Neil and Chesterville Fields.

2. Amerada Hess Corp.: Violation of Section 7(b) of the NGA and regulations thereunder for sales to Channel from the Chesterville Field.

3. Champlin Petroleum Co.: Violation of Sections 4(a) and 7(b) of the NGA and regulations thereunder for sales to Channel and Celanese Chemical Corporation from the Stratton-Agua Dulce Field.

4. Cities Service Oil Co.: Violation of Sections 4(a) and 7(b) of the NGA and regulations thereunder for sales to Channel from the Stedman Island Field.

5. Continental Oil Company: Violation of Section 7(b) of NGA and regulations thereunder for sales to Channel from the Chesterville and Cold Springs Fields.

6. Energy Reserves Group, Inc.: Violation, and aiding and abetting a violation, of Section 7(b) of the NGA and Sections 104 and 504(a) of the NGPA and regulations thereunder, in connection with sales to Channel by Peninsula Resources Corporation from the Riverside Field.

7. Exxon Company: Violation of Sections 4(a) and 7(b) of the NGA and regulations thereunder for sales to Channel from the Stedman Island Field.

8. Forest Oil Company: Violation of Section 7(b) of the NGA and regulations thereunder for sales to Channel from the Brayton Field.

9. Getty Oil Company: Violations of Sections 4(a) and 7(b) of the NGA and regulations thereunder for sales to Channel from the Bay City Field.

10. GoldKing Production Co.: Violations of sections 4(a) and 7(b) of the NGA and Sections 104 and 504(a) of the NGPA and regulations thereunder for sales to Channel from the North Garwood Field.

11. Kriby Exploration Co.: Violation of Section 7(b) of the NGA and regulations thereunder for sales to Channel from the Chesterville Field.

12. Logue and Patterson: Violation of section 7(b) of the NGA and regulations thereunder for sales to Channel from the Agua Dulce Field.

13. Monsanto Company: Violation of Sections 7(b) of the NGA and regulations thereunder for sales to Channel from the Chesterville Field.

14. Peninsula Resources Corp.: Violations of Sections 4(a) and 7(b) of the NGA and Sections 104 and 504(a) of the NGPA and regulations thereunder for sales to Channel from the Riverside Field.

15. Puenticitas Oil Company: Violation of Section 7(b) of the NGA and regulations thereunder for sales to Channel from the Brayton and Agua Dulce Fields.

16. Shell Oil Co.: Violation of Section 7(b) of the NGA and regulations thereunder for sales to Channel from the Seeligson and Chesterville Fields.

17. South Texas Oil & Gas Producing Co., Inc.: Violation of Sections 4(a) and 7(b) of the NGA and Sections 104 and 504(a) of the NGPA and the regulations thereunder for sales to Channel from the Brayton and Agua Dulce Fields.

18. J. C. Storm: Violation of Sections 4(a) and 7(b) of the NGA and Sections 104 and 504(a) of the NGPA and regulations thereunder for sales to Channel from the Brayton and Agua Dulce Fields.

[FR Doc. 82–27977 Filed 10–8–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 6642–000]

Aquenergy Systems, Inc.; Application for Preliminary Permit

October 6, 1982.

Take notice that Aquenergy Systems, Inc. (Applicant) filed on August 27, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6642 to be known as the Clifton 3 Hydroelectric Project located on the Pacolet River in Spartanburg County, South Carolina. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Ralph Walker, Aquenergy Systems, Inc., Post Office Box 8991, Greenville, South Carolina 29604.

Project Description—The proposed project would consist of: (1) An existing stone masonry dam approximately 225 feet long and 27 feet high; (2) an existing reservoir with an insignificant surface area and storage capacity; (3) a

proposed powerhouse to be built on the foundation of the old powerhouse which was removed; (4) the installation of two turbine/generators with a total installed capacity of 1.9 MW; (5) two existing 15-foot-long penstocks, and an existing tailrace; (6) a proposed transmission line approximately 200-feet-long which interconnects with the Duke Power Company; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output will be 9.3 GWh.

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 18 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 $20,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 17, 1983, 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 file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 16, 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 file 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 Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 16, 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 "MOTION 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 motion 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. 82-27881 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6649-000]

Robert F. Desrochers d.b.a. Fairbank's Mill Hydro; Exemption From Licensing

October 8, 1982.

A notice of exemption from licensing of a small hydroelectric project known as Fairbank's Mill Project No. 6649 was filed on August 30, 1982, by Robert F. Desrochers, d.b.a. Fairbank's Mill Hydro. The proposed hydroelectric project would have an installed capacity of 18 kW and would be located on the Sleeper's River in Caledonia County, Vermont.

Pursuant to §§ 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in § 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of September 29, 1982. Any terms and conditions specified in any agency letters of certification do not apply to this exemption.

Lawrence R. Anderson,

Director, Office of Electric Power Regulation.

[FR Doc. 82-27884 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6620-000]

City of Duchesne, Utah; Application for License (Over 5 MW)

October 6, 1982.

Take notice that the City of Duchesne, Utah (Applicant) filed on August 20, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Long Park Project No. 6620. The project would be located on Sheep Creek in Daggett County, Utah. Correspondence with the Applicant should be directed to: Mayor Scott Maughan, Drawer B, Duchesne, Utah 84021.

Project Description—The proposed project would consist of two connected developments, the Upper Long Park Development to include: (1) The existing Long Park Dam, 102.5 feet high and 1,860 feet long; (2) the existing reservoir covering 340 acres with a gross storage capacity of 13,700 acre-feet at elevation 8645.5 feet m.s.l.; (3) a new penstock, 10,670 feet long and 42 inches in diameter; (4) a new 37- by 46-foot powerhouse containing one new 7.0-MW turbine/generator unit operating under a head of 1125.5 feet; (5) a 69-kV transmission line three miles long; and (6) appurtenant facilities; and the Lower Long Park Development to include: (1) a new diversion dam, 5 feet high and 24 feet long; (2) a new intake structure 6 by 23 feet; (3) a new trapezoidal canal 6,000 feet long; (4) a new concrete forebay 16 by 25 feet; (5) a new 42-inch diameter penstock 1,340 feet long; (6) a new 32- by 43-foot powerhouse containing one 1.4-MW turbine/generator unit operating under a head of 145 feet; and (7) appurtenant facilities.

The project will utilize 23.73 acres of land within the Ashley National Forest.

Purpose of Project—The average annual generation of 23.8 million kWh would be used by the Applicant in its proposed utility system.

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.

Competing Applications—This application was filed as a competing application to Utah Power & Light Company's application for Project No. 5037 filed on January 19, 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 applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 22, 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 "MOTION 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 motion 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. 82-27882 Filed 10-8-82; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 6600-000]

Eagle Power Co.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 6, 1982.

Take notice that on August 17, 1982, Eagle Power Company 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 No. 6600 would be located on Silver Creek, a tributary of the Cowlitz River, near Silver Brook, in Lewis County, Washington. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Eagle Power Company, P.O. Box 485, 208 Third Street, Lynden, Washington 98264.

Project Description.—The proposed project would consist of: (1) A proposed 6-foot high, 60-foot long, concrete diversion structure; (2) a proposed 72-inch diameter concrete or steel pipeline 8,700 feet long; (3) a proposed 72-inch diameter steel penstock 1,300 feet long; (4) a proposed powerhouse containing three or less impulse type turbine/generator units having a total installed capacity of 4.9 MW and producing an estimated average annual energy output of 30.0 GWh; (5) a proposed "racked" open channel tailrace returning flows to Silver Creek; (6) a proposed substation; (7) approximately one-half mile of proposed 69 kV primary transmission line to connect to an existing Lewis County PUD #1 line; (8) 6,000 feet of proposed access road; and (9) appurtenant facilities. The project would be operated in a run-of-river mode and would be situated entirely within the Gifford Pinchot National Forest.

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, the Washington State Department of Game and the Washington State Department of Fisheries 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 file to the Commission, on or before November 26, 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. Filing 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 Motions To Intervene.—Anyone may file comments, a protest, or a motion to intevene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before November 26, 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 "MOTION 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 motion 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. 82-27885 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6572-000]

Timothy R. Fallon; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 7, 1982.

Take notice that on August 3, 1982, and amended on August 13, 1982, Timonthy R. Fallen (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 No. 6572 would be located on the Indian River in Jefferson County, New York. This exemption application was filed during the term of the Applicant's Preliminary Permit for Project No. 4445. Correspondence with the Applicant should be directed to: Timothy R. Fallon, 3 Maplewood Point, Ithaca, New York 14580; or Peter J. Fallon, 28 Sonora Parkway, Rochester, New York 14618.

Project Description.—The proposed project would consist of: (1) An existing concrete gravity dam 11 feet high and 189 feet long; (2) an impoundment with a surface area of 20 acres, a storage capacity of 101 acre-feet, and a water surface elevation of 392.0 feet m.s.l.; (3) an existing intake structure with control gates; (4) three existing penstocks each 4 feet long, two 6.5 feet in diameter and one 5 feet in diameter leading to; (5) an existing powerhouse with 3 new generating units having a total installed capacity of 443 kW; (6) an existing tailrace; (7) a new 23-kV transmission line 7,920 feet; and (8) appurtenant facilities. All project energy would be sold to Niagara Mohawk Power Corporation. The Applicant estimates the average annual energy production would be 1,997,000. All project facilities are owned by the Applicant.

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.

Competing Applications.—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before November 26, 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. Filing 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 Motions To Intervene.—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before November 26, 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 "MOTION 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 motion 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. 82-27886 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3038-002]

Lower Tule River Irrigation District; Application for License (5 MW or Less)

October 7, 1982.

Take notice that Lower Tule River Irrigation District (Applicant) filed on August 9, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for construction and operation of a water power project to be known as Success Power Project No. 3038. The project would be located at the Army Corps of Engineers' Success Dam on Tule River in Tulare County, California. Correspondence with the Applicant should be directed to: Mr. Roger Robb, Engineer-Manager, Lower Tule River Irrigation District, P.O. Box 3888, Poplar, California 93257.

Project Description.—The proposed project would utilize the head developed by the Corps of Engineers' existing Success Dam. The project would consist of: (1) A 42-inch-diameter trifurcation, 405 feet downstream from the toe of the dam, on the existing 42-inch-diameter conduit, with two of the branches leading to generating units, and the third to Pioneer Ditch outlet; (2) a power house containing two generating units with a total rated capacity of 1,400 kW; and (3) appurtenant facilities. The Applicant estimates a 4.87 million kWh average annual energy production.

Purpose of Project.—Power would be sold to local utilities.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the

application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must file with the Commission, on or before December 17, 1982, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Motions To Intervene.—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 Fed. Reg. 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 17, 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 "MOTION 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 motion 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. 82-27887 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6664-000]

Lawrence J. McMurtrey; Application for Preliminary Permit

October 6, 1982.

Take notice that Lawrence J. McMurtrey (Applicant) filed on September 1, 1982, an application for preliminary permit [pursuant to the Federal power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6664 to be known as the Dan Creek Project located on Dan Creek within Snoqualmie—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. Lawrence J. McMurtrey, 12122—196th N.E., Redmond, Washington 98052.

Project Description.—The proposed project would consist of: (1) Two 24-inch-high diversion structures; (2) two 24-inch-diameter pipelines, one 2,000 feet long and the other 7,000-feet-long connecting with; (3) a 36-inch-diameter, 7,000-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 2,880 kW, operating under a net head of 1,159 feet; and (5) a 3-mile-long, 115-kV transmission line to tie into an existing line. The estimated average annual energy output is 12.6 million kWh.

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 priod of 24 months during which the Applicant would conduct engineering, environmental, and economic feasibility studies as well as prepare an application for an FERC license. No new roads will be constructed during this period. The estimated cost for conducting these studies and preparing an application for a FERC license is $40,000.

Competing Applicatiuons.—Anyone desiring to file a competing application for preliminary permit must file with the Commission , on or before December 16, 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 file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 16, 1982, and should specify the type of application forthcoming. Any 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].

Filing 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 February 14, 1983.

Agency Comments.—Federal, State, and local agencies are invited to file 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 Motions To Intervene.—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filled on or before December 16, 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 "MOTION 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. Plum, 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 Commisson, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion 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. 82-27888 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6680-000]

City of Sebastopol; Application for Preliminary Permit

October 6, 1982.

Take notice the City of Sebastopol (Applicant) filed on September 8, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6680 to be known as the Bean Creek Power Project located on Bean Creek on lands managed by the United States Bureau of Land Management in Butte 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. Melvin K. Davis, City Manager, 7120 Bodega Avenue, Sebastopol, California 95472.

Project Description—The proposed project would consist of: (1) a 5-foot-high, 40-foot-long diversion structure; (2) a 42-inch-diameter, 2,600-foot-long conduit discharging into; (3) a 32-inch-diameter, 800-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 1,600 kW, operating under a head of 600 feet; and (5) a 4-mile-long, 12-kV transmission line extending from the powerhouse to an existing Pacific Gas and Electric Company line. The estimated average annual energy output is 13.2 million kWh.

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 the Applicant would conduct engineering, economic and environmental feasibility studies as well as prepare an application for an FERC license. No new roads will be needed to conduct these studies. The estimated cost for conducting these studies and preparing an application for an FERC license is $45,000.00.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before December 16, 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 file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before December 16, 1982, and should specify the type of application forthcoming. Any 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].

Filing 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 February 14, 1982.

Agency Comments—Federal, State, and local agencies are invited to file 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 Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 16, 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 "MOTION 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 motion 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. 82-27883 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6434-000]

Thomas A. Nelson; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 7, 1982.

Take notice that on June 15, 1982, Thomas A. Nelson [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 No. 6434 would be located on Ditch Creek, within Boise National Forest in Valley County, Idaho. Correspondence with the Applicant should be directed to: Mr. Warren B. Nelson, 3410 Montvue Drive, Meridian, Idaho 83640.

Project Description—The proposed project would consist of: (1) An aluminum diversion structure 6 feet high at elevation 6040 feet; (2) a penstock 18 inches in diameter by 5100 feet long; (3) a powerplant at elevation 5320 feet containing two turbine generators with a total capacity of 500 kW and an estimated average annual output of 2.04 GWh; and (4) a transmission line 300 feet long. The Applicant expects to sell project output to the Idaho 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 Idaho Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to file 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 file with the Commission, on or before November 29, 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. Filing 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 Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before November 29, 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 "MOTION 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 motion 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. 82-27889 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

Northern States Power Co.; Notice of Filing

[Docket No. ER82-821-000]

October 5, 1982.

The filing company submits the following:

Take notice that on September 21, 1982, Northern States Power Company (NSP) tendered for filing a service agreement dated September 2, 1982 between NSP and the City of River Falls, Wisconsin (River Falls) for the commencement of wholesale electric service by NSP to River Falls. Under the service agreement River Falls will purchase its electric requirements from NSP under NSP's W-1 Rate Schedule, the schedule which applies to all-requirements wholesale service. NSP states that this filing constitutes an initial rate filing because NSP has not previously served River Falls at wholesale.

NSP proposes an effective date of October 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon River Falls and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 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 motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 82-27890 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6678-000]

P & K Energies; Application for Preliminary Permit

October 7, 1982.

Take notice that P & K Energies (Applicant) filed on September 7, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6678 to be known as the K.P. Water Power Project located on Chalk Creek in Millard County, Utah, on lands of the Fish Lake National Forest. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: C. Patrick McBride, General Manager, P & K Energies, 2402 Elizabeth #5, Salt Lake City, Utah 84106.

Project Description—The proposed project would consist of: (1) An existing small storage pond; (2) an existing 21-inch diameter, 13,200-foot long PVC penstock of which 1,000 feet would be replaced with 21-inch diameter steel pipe; (3) a new powerhouse with an installed capacity of 450 kW; (4) a new 200-foot long transmission line; and (5) other appurtenances. Existing facilities are owned by the Chalk Creek Irrigation Company. Applicant estimates an average annual generation of 3,000,000 kWh. Project energy would be sold to Fillmore City.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $10,000.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 18, 1983, 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 file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or

before December 20, 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 file 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 Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before December 20, 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 "MOTION 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 motion 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. 82-27891 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

W. R. Poulton; Application for Exemption of Small Conduit Hydroelectric Facility

[Project No. 6594-000]

October 6, 1982.

Take notice that on August 13, 1982, W. R. Poulton, (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) [16 U.S.C. 823(a)], for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Poulton Power Project (FERC Project No. 6594) would be located on the tailrace ditch to Pacific Gas and Electric Company's South Cow Creek Powerhouse (FERC Project No. 606) upstream of the diversion into the Abbott Irrigation Ditch in Shasta County, California. Correspondence with the Applicant should be directed to: Fred G. Castagna, Mega Hydro, Inc., 2576 Hartnell Ave., Redding, CA 96002.

Project Description—The proposed project would consist of: (1) A 4-foot-high diversion structure and intake at elevation 801 feet; (2) a 2,250-foot-long, 45-inch-diameter (maximum) fiberglass penstock; and (3) a powerhouse at elevation 754 feet containing a single 100-kW generating unit.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in section 30 of the Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or 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 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 45 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.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 26, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION 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 motion 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. 82-27892 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6119-000]

Michael Russo; Application for License (5 MW or Less)

October 7, 1982.

Take notice that Michael Russo (Applicant) filed on March 22, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Shannock Project No. 6119. The project would be located on the Pawcatuck River in the town of Shannock, Washington County, Rhode Island. Correspondence with the Applicant should be directed to: Mr. Michael Russo, 50 Main Street, Shannock, Rhode Island 02875 (401) 792-6148.

Project Description—The proposed project would consist of:

(A) The upper Horseshoe site consisting of: (1) An existing 10-foot-high, 90-foot-long stone dam and forebay; (2) a reservoir at elevation 94 feet M.S.L. with negligible storage

capacity; (3) an existing powerhouse containing a single 150-kW turbine-generator unit to be rehabilitated; (4) a new fishway and screen for protection of downstream migrants; (5) a 1 mile-long, 13.8-kV transmission line; and (6) appurtenant facilities;

(B) The lower Shannock site consisting of: (1) An existing 5-foot-high, 60-foot-long rock-filled timber crib dam and forebay; (2) an existing powerhouse containing a single 100-kW turbine-generator to be rehabilitated; (3) a reservoir at elevation 72 feet M.S.L. with negligible storage capacity; (4) a 1.5-mile-long, 13.8-kV transmission line; (5) a new fishway and screen for protection of downstream migrants; and (6) appurtenant facilities. The project would produce up to 1,420,000 kWh annually. Energy produced at the project would likely be sold to a local utility. The project dams are owned by Mr. George Martin of West Warwick, Rhode Island.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 17, 1982, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 17, 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 "MOTION 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 motion 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. 82–27893 Filed 10–8–82; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2796–002]

Siskiyou County Flood Control and Water Conservation District; Application for Exemption for Small Hydroelectric Power Project of 5 MW or less Capacity

October 7, 1982.

Take notice that on July 29, 1982, and supplemented on August 10 and 12, 1982, the Siskiyou County Flood Control and Water Conservation District, 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 No. 2796 would be located on Sacramento River in Siskiyou County, California. The application for exemption filed on July 29, 1982, supersedes an application for license for the same project filed on November 24, 1981. Correspondence with the Applicant should be directed to: Mr. D. A. Gravenkamp, Director of Public Works, Siskiyou County Department of Public Works, Yreka, California 96097.

Project Description—The proposed project would consist, of: installation of power generating facilities at Applicant's Box Canyon Dam. Principal features include: (1) The existing multipe-level intake structure; (2) extension of the existing low-level outlet and spillway; (3) a plant consisting of two turbine-generator units with a total rated capacity of 5,000 kW to be constructed under the spillway extension; (4) a switchyard and short transmission line segment; and (5) appurtenant facilities. The Box Canyon Dam is a 209-feet high, 1100-feet long gravity and rockfill structure which forms Lake Siskiyou. The lake has a total storage capacity of 26,000 acre-feet and an approximate surface area of 430 acres at a normal pool elevation of 3181 feet.

Purpose of Project—The project estimated average annual generation is 21.9 GWh. Project power would be sold to a nearby utility system.

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 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 file to

the Commission, on or before November 26, 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. Filing 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 Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before November 26, 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 "MOTION 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 motion 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. 82-27894 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. IN78-1-000, IN79-3-000; CI75-45-000, CI75-466-000, CI77-298-000, CP75-23-000, CP75-119-000, CP75-120-000, CP75-358-000 and CP76-284-000]

Tenneco Inc., et al.; Order Terminating Proceedings, Authorizing Institution of Civil Action, and Approving Stipulation and Consent Agreement

Issued: October 5, 1982.

By this Order, subject only to the proposed Judgment based upon the Complaint and the Stipulation and Consent Agreement authorized herein being entered by the U.S. District Court for the District of Columbia and becoming final and no longer subject to judicial review; the Commission finally resolves and terminates the proceedings described below, as to Tenneco Inc., and its divisions, subsidiaries and affiliates (referred to herein as "Tenneco"), regarding any violation of, or remedy for violation of, the Natural Gas Act, 15 U.S.C. 717, *et seq.* ("Natural Gas Act"); the Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 ("Natural Gas Policy Act"); and the Commission's rules, regulations and orders thereunder, relating to or in connection with all matters within the scope of Article VI(2) of the Stipulation and Consent Agreement ("Agreement"), attached hereto as Exhibit A. After several years of investigation in Docket Nos. IN78–1 and IN79–3, and after lengthy negotiations, the Commission has determined that the actions authorized, approved, and adopted by this Order are appropriate, necessary, and in the public interest.

Therefore, the Commission hereby severs and terminates as to Tenneco all proceedings and all issues pending in the proceedings in Commission Docket Nos. IN78–1 and IN79–3, pursuant to the Commission's powers under Sections 4, 5, 7, 14, 16, and 20 of the Natural Gas Act, pursuant to Sections 501 and 504 of the Natural Gas Policy Act, and pursuant to § 1b.7 of the Commission's Rules of Practice and Procedure, 18 CFR 1b.7. In addition, pursuant to the Agreement, the Commission hereby formally resolves and terminates as to Tenneco all claims and causes of action asserted in the Complaint for Injunctive and Other Equitable Relief ("Complaint"), attached hereto as Exhibit B; all matters within the scope of Article VI(2) of the Agreement, and all past, pending or potential matters in Docket Nos. CI75–45, CI75–466, CI77–298, CP75–23, CP75–119, CP75–120, CP75–358 and CP76–284, insofar as those matters concern alleged or unalleged liability for violations of the Natural Gas Act, the Natural Gas Policy Act or any of the Commission's rules, regulations or orders thereunder, as set forth in the Agreement. In settlement of all issues relating to matters resolved by this Order, the Commission and Tenneco have made certain agreements summarized herein.

I. Background

This Order results from a series of separate proceedings instituted since 1974, all involving Tenneco. The history of those proceedings and the matters at issue in each case are fully set forth in previous Commission orders in the referenced dockets, and a detailed description in this Order is unnecessary. However, a brief review of those proceedings is appropriate.

A. Docket Nos. CI75–45, CI75–466, CP75–23, CP75–119, CP75–120 and IN78–1

In 1974, in Docket Nos. CI75–45 and CP75–23, respectively, Tenneco Oil Company ("Tenneco Oil"), an affiliate of Tenneco Inc., and Tennessee Gas Pipeline Company ("Tennessee"), a Division of Tenneco Inc., filed applications seeking authorization for certain sales for resale and transportation in interstate commerce of natural gas produced by Tenneco Oil from certain leases in the Federal Offshore Domain and from certain points within the state of Louisiana. In Docket No. CP75–119, Tennesee requested authorization to transport natural gas on behalf of Shell Oil Company from certain points off the coast of Louisiana to a point within that state. In Docket No. CP75–120, Tenneco Oil and Tennessee jointly requested authorization for an exchange and transportation of natural gas from certain delivery points in Texas for delivery in Louisiana. The applications filed by Tenneco Oil and Tennessee were consolidated with applications filed by other parties for purposes of deciding the general question of whether to permit transportation of reserved offshore gas.[1] In a related matter, in

[1] The general policy issue presented by Docket Nos. CI75–45 *et al.*, regarding transportation of reserved offshore gas for direct sale to industrial customers or for use in a producer's own facilities is not addressed in any way by this Order. That issue was decided in Opinion No. 789, which was modified on rehearing in Opinion Nos. 10 and 10–A. In *Air Products & Chemicals, Inc. v. FERC*, 650 F.2d 687 (5th Cir. 1981), the U.S. Court of Appeals for the Fifth Circuit vacated Opinion Nos. 10 and 10–A and remanded to the Commission for further proceedngs. The questions presented by the Court's remand are presently pending before the Commission. While this Order terminates all issues in Docket Nos. CI75–45, CP75–23, CP75–119 and CP75–120 concerning any violation of, or remedy for violation of, the Natural Gas Act, the Natural Gas Policy Act, and the Commission's rules, regulations or orders thereunder, it has no effect on the

Docket No. CI75–466, the Commission addressed and resolved issues relating to an imbalance of gas deliveries and receipts that had arisen between Tenneco Oil and Tennessee.

During the course of the proceedings in Docket Nos. CI75–45, *et al.* and CI75–466, allegations were made that Tenneco Oil and Tennessee may have violated Section 7 of the Natural Gas Act. On June 21, 1978, the Commission issued an Order Directing Private Investigation in Docket No. IN78–1 to investigate all issues regarding alleged violations of the Natural Gas Act arising from Docket Nos. CI75–45 *et al.* and CI75–466.

B. Docket Nos. CP75–358 and CP76–284

In Docket No. CP75–358, Tennessee filed an application pursuant to Section 1(c) of the Natural Gas Act seeking an exemption from Commission jurisdiction for a certain segment of its pipeline system within Texas. Subsequently, in Docket No. CP76–284, Tennessee filed a conditional application requesting authorization for abandonment of the pipeline segment in the event of Commission denial of the requested Section 1(c) exemption. The two applications were consolidated in a single proceeding. In an Order issued August 6, 1979, the Commission granted the application for abandonment, subject to certain conditions, and found that certain violations of Sections 4 and 7 of the Natural Gas Act had occurred.

C. Docket Nos. CI77–298 and IN79–3

On February 28, 1977, Tenneco filed a Petition for a Declaratory Order requesting the Commission to resolve uncertainties regarding whether all necessary filings had been made prior to the commencement of certain sales by producers to Channel Industries Gas Company, a Tenneco affiliate ("Channel"), and to grant any necessary authorization. Tenneco later filed supplements to its petition on March 17, 1977 and on July 1, 1977. On March 8, 1977, the Commission instituted a proceeding in Docket No. CI77–298 regarding the matters raised in the Tenneco petition. The Commission subsequently added as respondents certain producers involved in the transactions described in Tenneco's petition and the supplements thereto. After a hearing, settlement negotiations among the Staff and all parties to the proceeding were initiated. On January 29, 1979 the Commission issued an Order Suspending Proceeding in Docket No. CI77–298, and simultaneously issued an Order Directing Private Investigation in Docket No. IN79–3. By these orders, the Commission transferred the inquiry concerning the matters raised in CI77–298, and other matters, to its Office of Enforcement to be conducted as a private investigation under the Commission's Rules Relating to Investigations. On December 10, 1980, the Commission issued an Order of Dismissal in Docket No. CI77–298 terminating all proceedings in that docket, and stating that the matters at issue would continue to be investigated in Docket No. IN79–3.[2]

II. Resolution

During the past four years, the Commission has investigated all aspects of the issues raised in the proceedings summarized above.[3] As a result of this comprehensive investigation, the Commission has gained a thorough knowledge of the facts surrounding the transactions at issue. Following lengthy negotiations with Tenneco, the Commission has determined that the interests of Tennessee's interstate customers, and the public interest in general, will be best served by entering into an agreed resolution of all such issues rather than engaging in protracted and uncertain litigation. To implement this resolution, the Commission authorizes the Office of General Counsel to file the Complaint in the U.S. District Court for the District of Columbia; concurrently authorizes, adopts, and enters into the Agreement resolving any and all administrative and civil liabilities or claims arising from the issues relating to the Commission proceedings and the matters described in this Order and in the Agreement; and enters this Order.

III. Summary of Settlement

Under the terms of the Agreement adopted by this Order, the Commission and Tenneco agree to the filing of the Commission's Complaint and entry of judgment in the form attached hereto as Exhibit C ("Judgment"), by the District Court. Neither Tenneco, nor any of its divisions, subsidiaries or affiliates admit or deny the allegations made in the Commission's Complaint.

The Agreement provides that Tenneco shall cause Tennessee to reduce its charges for natural gas service to its interstate customers in the principal amount of $16,000,000.00, solely for purposes of settlement, without a finding of or admission of any liability. Tenneco further agrees that it will seek to have dismissed as moot its Petition for Review in the U.S. Court of Appeals for the Fifth Circuit in *Tenneco Inc., et al.* v. *FERC*, No. 81–4049 when the Judgment is final and no longer subject to judicial review, and that it will not contest, opposed, intervene in or appeal from any settlement with any other person or entity involved in Commission Docket No. IN79–3, unless such settlement is contrary to the terms and understandings adopted in the Agreement, or unless in Tenneco's judgment, exercised in good faith, such settlement is otherwise adverse to Tenneco's direct interests. Finally, Tenneco agrees to be permanently enjoined from violating, or aiding and abetting the violation of, certain sections of the Natural Gas Act and the Commission's regulations thereunder.

The Commission agrees that this Order and the Agreement and the Judgment shall, upon entry of the Judgment, resolve as to Tenneco, and its officers, directors, employees, agents, servants, and representatives, past, present and future, any and all administrative or civil liabilities or claims arising from issues relating to the Commission proceedings and the matters described in this Order, in the Complaint, or in the Agreement. The Agreement also provides that the Commission finds that the interests of certain producers and their predecessors, successors, assigns and reversioners in certain fields and units described fully in the Agreement are not, from the effective date of the Agreement forward, deemed to be dedicated to interstate commerce within the meaning of the Natural Gas Act, or committed or dedicated to interstate commerce within the meaning of the Natural Gas Policy Act.

The Commission Finds

(1) In view of the disputed issues of fact and law involved in the proceedings described herein, in view of the effort and expense that would be incurred if these issues were to be litigated further, and in view of the significant benefits to Tennessee's interstate customers of the agreed reduction in Tennessee's charges for natural gas service, it is necessary, appropriate, and in the public interest that the Commission enter into the settlement summarized herein, the terms

questions remanded by the Fifth Circuit for further Commission proceedings. Any certificates which have been or may be issued or amended in those proceedings are not affected by this Order.

[2] A petition for review of the Commission's Orders suspending and terminating Docket No. CI77–298 presently is pending in the U.S. Court of Appeals for the Fifth Circuit in *Tenneco Inc., et al. v. FERC*, No. 81–4049 (filed Feb. 9, 1981).

[3] On July 27, 1979, all potential criminal liability for the transactions at issue in the dockets described herein was resolved by a Plea Agreement and Judgment in *United States v. Tenneco Inc.*, Crim. No. 79–00362 (D.D.C. 1979). Tenneco has subsequently complied with all of the provisions of the Plea Agreement and Judgment.

and conditions of which are fully set forth in the Agreement, and enter this Order.

(2) Solely for the purposes of (a) effectuating the full and final settlement of all of the claims set forth in the Commission's Complaint and the matters and proceedings described in the Agreement, and (b) avoiding the termination of a source of supply of natural gas to the intrastate customers of Channel, it is hereby found by the Commission that all interests of Atlantic Richfield Company, Mobil Producing Texas & New Mexico, Inc., Exxeter Petroleum Company, Tenneco Oil Company and Peninsula Resources Company, and the interests of their respective predecessors, successors, assigns, and reversioners, if any, in the fields and units described below, from which natural gas is being sold or is contracted to be sold to Channel on the effective date of the Agreement, are not, from the effective date of the Agreement forward, deemed to be dedicated to interstate commerce within the meaning of the Natural Gas Act or committed or dedicated to interstate commerce within the meaning of the Natural Gas Policy Act, and the Tenneco, through Channel, is authorized to continue to pay to the producers of such gas the maximum lawful price under Sections 105 or 106 of the Natural Gas Policy Act or any other maximum lawful price under the Natural Gas Policy Act applicable to gas not committed or dedicated to interstate commerce:

(a) All zones below what is known as "Zone 20–C4" within the areal limits of the Seeligson Unit, Jim Wells County, Texas;

(b) The Riverside Field, Nueces County, Texas; and

(c) The Brayton Field, Nueces County, Texas.

Nothing in this finding shall affect in any way whatsoever any liabilities or obligations of any person or entity, other than Tenneco, Channel or Tenneco Oil and their subsidiaries, affiliates and divisions, and their respective officers, directors, employees, agents, servants, representatives, successors, or assigns, arising out of or in connection with any sales of natural gas prior to the effective date of the Agreement to an intrastate purchaser from the fields and units, or portions thereof described in (2) (a) through (c) above.

The Commission Orders

A. Pursuant to Sections 4, 5, 7, 14, 16, and 20 of the Natural Gas Act, Sections 501 and 504 of the Natural Gas Policy Act, and Section 1b.7 of the Commission's Rules, all proceedings as to Tenneco in Commission Docket Nos. IN78–1 and IN79–3 are hereby terminated with prejudice to any further inquiry or litigation.

B. Pursuant to Section 4, 5, 7, 14, 16, and 20 of the Natural Gas Act, Section 501 and 504 of the Natural Gas Policy Act, and Section 1b.7 of the Commission's Rules all proceedings with respect to past, present or potential issues in Commission Docket Nos. IN78–1, IN79–3, CI75–45, CI75–466, CI77–298, CP75–23, CP75–119, CP75–120, CP75–358 and CP76–284 relating to alleged or unalleged violations of, or remedies for the violation of, the Natural Gas Act or the Natural Gas Policy Act or any of the Commission's rules, regulations or orders thereunder are hereby terminated with prejudice to any further inquiry or litigation as to Tenneco. The Commission hereby incorporates by reference Paragraph 4 of the Notice of Plea Agreement and Plea Agreement by and between the United States of America and Tenneco Inc., *et al.* in *United States* v. *Tenneco Inc.*, Crim. No. 79–00362 (D.D.C. July 27, 1979) in the U.S. District Court for the District of Columbia and includes the matters and transactions described therein and arising or occurring prior to the date hereof as among the past, present or potential issues as to which all proceedings are terminated with prejudice by this Order.

C. Tenneco shall, subject to, and as specified by, the provisions of Article VI(6) of the Agreement, cause its division Tennessee Gas Pipeline Company to reduce its charges for natural gas service to its interstate customers in the principal amount of $16,000,000.00 solely for the purpose of making restitution to those interstate customers in such amount, together with interest accrued from the date of filing of the Agreement pursuant to Ordering Paragraph G hereof, calculated at a rate of 14% per annum compounded quarterly.

D. The Stipulation and Consent Agreement is approved and adopted by the Commission, and the Secretary is directed to execute the Agreement on the Commission's behalf.

E. To provide an opportunity for public comment and rehearing, the Commission shall cause this Order to be published in the **Federal Register** and shall give written notice of the issuance of this Order to all parties to the proceedings set out in the caption hereof. The Commission will consider all comments filed within 30 days of the date of issuance hereof and any petitions for rehearing properly filed pursuant to Section 19(a) of the Natural Gas Act, 15 U.S.C. 717r(a).

F. As provided by 18 CFR 385.713(d)(2), if the Commission grants rehearing for purposes of further consideration, or otherwise reaches a tentative decision that rehearing should be granted on any issue, Tenneco is hereby given leave to respond to the petitions for rehearing and to any other comments received regarding the settlement.

G. When and if this Order becomes final and no longer subject to judicial review, the General Counsel shall file the Complaint and the Agreement, and shall seek entry of the Judgment, in the U.S. District Court for the District of Columbia.

H. The Commission hereby stays the effectiveness of its finding in Paragraph (2) above, and the implementation of Ordering Paragraphs A, B, C, and K until after the U.S. District Court for the District of Columbia has approved the Agreement and entered the proposed Judgment, and the Judgment has become final and no longer subject to judicial review.

I. This Order and any modification thereof are subject to the rights to withdraw specified in Article VI(11) of the Agreement. The Commission expressly reserves its power under Section 16 of the Natural Gas Act, 15 U.S.C. 717o, to rescind this Order and any subsequent orders if the rights enumerated in Article VI(11) of the Agreement are exercised at any time before the Judgment becomes final and no longer subject to judicial review.

J. Should Tenneco withdraw its acceptance of the Agreement as provided in Article VI(11) thereof, the Commission will join Tenneco in seeking the dismissal of the Complaint, if filed, without prejudice, and in requesting the Court to set aside, vacate and terminate any judgment entered with respect to the Complaint. Further, the Commission shall vacate this Order without prejudice to further proceedings in any of the dockets enumerated in the caption hereof.

K. This Order, and the Agreement, and the Judgment, upon entry by the Court, forever settle and resolve as to Tenneco, its divisions, subsidiaries and affiliates, and the officers, directors, employees, agents, servants, and representatives, past, present and furture, of each of them any and all administrative or civil issues, claims or liabilities relating to or in connection with any and all matters and transactions which are the subject of the Commission proceedings referred to above or otherwise described or referred to in this Order, in the Complaint, or in the Agreement.

L. Except as to Tenneco, and the persons and entities referred to in Ordering Paragraph K above, and except as expressly stated herein, this Order shall have no effect on any of the above proceedings or matters, shall have no effect on any actual or potential issues in the above Commission dockets, and shall not in any way affect or modify the actual or potential liability of any person or company under investigation or involved in any other way in the above Commission dockets.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Exhibit A

United States District Court for the District of Columbia

Federal Energy Regulatory Commission, Plaintiff, v. Tenneco Inc., Channel Industries Gas Company, and Tenneco Oil Company, Defendants, Civil Action No. —

Stipulation and Consent Agreement

I

Plaintiff Federal Energy Regulatory Commission, defendants Tenneco Inc., Channel Industries Gas Company and Tenneco Oil Company, for the sole purpose of resolving and settling this action and disputed issues of fact and law in connection with all of the potential administrative or civil liability of Tenneco Inc., Tenneco Oil Company, and Channel Industries Gas Company, and the potential administrative or civil liability of any of their divisions, subsidiaries and affiliates, under the Natural Gas Act, 15 U.S.C. 717, *et seq.* ("NGA"), the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.* ("NGPA"), and the Commission's rules, regulations and orders thereunder, which have or may have arisen from, or are connected with, the matters or factual situations which relate to the Commission's Complaint for injunctive and Other Equitable Relief ("Complaint"), or the proceedings in Commission Docket Nos. IN78–1, IN79–3, CI75–45, CI75–466, CI77–298, CP75–23, CP75–119, CP75–120, CP75–358, or CP76–284, or the matters described in Paragraph (2) of Article VI hereof, hereby stipulate and agree as follows:

II

For purposes of this Stipulation and Consent Agreement ("Agreement"), the proposed Judgment ("Judgment") attached hereto as Appendix A, and all matters relating thereto or arising therefrom, including the actions to be taken by the Commission pursuant to Article VI hereof, the parties hereto are identified as follows:

(a) The "Commission" means the Federal Energy Regulatory Commission, which is an independent regulatory agency of the United States government, established by the Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.* (Supp. II), and includes its predecessor agency the Federal Power Commission, and any agency which may succeed to the Commission's authority to administer and enforce the NGA and the NGPA.

(b) "Tenneco" means Tenneco Inc., a Delaware corporation, and its divisions, subsidiaries and affiliates, including those hereinafter identified, and its division, Tennessee Gas Pipeline Company ("Tennessee").

(c) "Channel" means Channel Industries Gas Company, a Delaware corporation, which is a wholly owned subsidiary of Tenneco Corporation, a Delaware corporation, which is a wholly owned subsidiary of Tenneco Inc.

(d) "Tenneco Oil" means Tenneco Oil Company, a Delaware corporation, which is a wholly owned subsidiary of Tenneco Corporation, a Delaware corporation, which is a wholly owned subsidiary of Tenneco Inc.

III

Tenneco, Channel and Tenneco Oil, solely for the purposes of the entry, enforcement and modification of the proposed Judgment, admit jurisdiction over the parties and subject matter in this action.

IV

The Commission, Tenneco, Channel and Tenneco Oil consent that, following the filing of the Complaint and this Agreement, the Court enter the proposed Judgment without further proceedings or notice to the Commission, Tenneco, Channel or Tenneco Oil. In consenting to the entry of the Judgment, Tenneco, Channel and Tenneco Oil neither admit nor deny the allegations made by the Commission in its Complaint, except as specifically stated in this Agreement.

V

As a result of numerous settlement conferences, the Commission, Tenneco, Channel and Tenneco Oil have agreed to a resolution of the matters relating to the proceedings enumerated in Articles I and VI(2) hereof which reflect a recognition by the Commission, Tenneco, Channel and Tenneco Oil of the disputed issues of fact and law involved as well as the effort and expense which would be incurred if this action were to proceed.

VI

(1) Except as expressly stipulated, acknowledged and agreed herein, the Comission, Tenneco, Channel and Tenneco Oil have not made and do not make any other admissions, acknowledgements or agreements in connection herewith.

(2) The Commission, Tenneco, Channel and Tenneco Oil agree that this Agreement and the Order Terminating Proceedings, Authorizing Institution of Civil Action, and Approving Stipulation and Consent Agreement attached hereto as Appendix B ("Order") shall, upon the Judgment becoming final and no longer subject to judicial review, forever settle and resolve as to Tenneco, Channel and Tenneco Oil, and each of them, and their subsidiaries, affiliates and divisions, and their respective officers, directors, employees, agents, servants and representatives, past, present and future, any and all administrative or civil issues, claims, or liabilities relating to or in connection with any and all claims and causes of action asserted in the Complaint, any and all matters and transactions which are the subjects of the proceedings enumerated in Article I above, and any and all matters and transactions arising or occurring prior to the effective date of this Agreement and of the nature described in Paragraph 4 of the Notice of Plea Agreement and Plea Agreement by and between the United States of America and Tenneco Inc., *et al.*, in *United States v. Tenneco Inc.*, Crim. No. 79–00362 (D.D.C. July 27, 1979). Subject to the provisions of Paragraph (15) of this Article VI, this Agreement shall in no way restrict or infringe upon the Commission's right to provide documents or information obtained in the course of any of its investigations involving Tenneco, Channel and Tenneco Oil to other federal governmnental departments or agencies upon request by such departments or agencies or as provided by law.

(3) The Commission represents and agrees that it has adopted the Order attached hereto as Appendix B, which is a final order of the Commission subject only to the proposed Judgment's being entered by the U.S. District Court for the District of Columbia and becoming final and no longer subject to judicial review, and that it has not instituted and, except as provided for in such Order, will not reopen proceedings or institute new proceedings in connection with any potential liability for matters described in such Order.

(4) The Commission, Tenneco, Channel and Tenneco Oil waive entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure.

(5) The Commission, Tenneco, Channel and Tenneco Oil acknowledge that they have entered into this Agreement voluntarily and that, other than the agreements set forth herein, no tender, offer, promise, or threat of any kind whatsoever has been made by any of them, or by any member, director, officer, employee, agent or representative of any of them, to induce any of them to enter into this Agreement.

(6) Tenneco agrees that it will, at the intervals and in the manner hereinafter specified, cause Tennessee to reduce its charges for natural gas service to its interstate customers by the amount of $16,000,000.00 ("settlement amount"), together with interest on the balance of the settlement amount from time to time outstanding from the date of filing this Agreement with the Court to the date that the full settlement amount has been so credited to Tennessee's interstate customers, at the rate of 14% per annum, compounded quarterly ("agreed interest rate").

Beginning on the January 1 or July 1 next after the Judgment becomes final and no longer subject to judicial review, and semiannually thereafter, Tennessee shall place in effect a negative surcharge to its Commodity Rate (as defined in Tennessee's Gas Tariff filed with the Commission) designed to flow through to its interstate customers over the ensuing six-month period the aggregate amount ("current settlement increment") consisting of principal and interest attributable to such period as set forth in the following schedule:

Surcharge period	Current settlement increment	Interest	Principal	Settlement amount balance
				$16,000,000
1st	(1)	(1)	$777,078	15,222,922
2d	$2,324,502	$1,085,300	1,239,202	13,983,720
3d	2,324,502	991,041	1,333,461	12,650,259
4th	2,324,502	889,613	1,434,889	11,215,370
5th	2,324,502	780,469	1,544,033	9,671,337
6th	2,324,502	663,023	1,661,479	8,009,858
7th	2,324,502	536,644	1,787,858	6,222,000
8th	2,324,502	400,651	1,923,851	4,298,149
9th	2,324,502	254,314	2,070,188	2,227,961
10th	2,324,502	96,541	2,227,961	

[1] For the 1st surcharge period, the current settlement increment will include, in addition to the principal amount indicated, the amount of interest at the agreed interest rate accrued on the settlement amount from the date of filing this Agreement to the commencement of such period.

The negative surcharge for amortizing each current settlement increment shall be determined by dividing the current settlement increment by Tennessee's estimated jurisdictional sales for the surcharge period, all expressed in either thousands of cubic feet (Mcf) or in dekatherms (Dkt) consistent with Tennessee's Gas Tariff in effect from time to time. The resulting quotient stated to the nearest one one-hundredth cent shall be the applicable negative surcharge for that surcharge period. Notwithstanding the foregoing, Tennessee may, in its sole discretion, increase the amount of the current settlement increment attributable to any surcharge period, by adding thereto the entire settlement amount balance indicated for such period on the foregoing schedule, whereupon Tennessee shall be under no further obligation hereunder to place in effect a negative surcharge to its Commodity Rate for any additional six-month period.

Tennessee shall establish a separate Tracker Account in its FERC Gas Tariff in which each current settlement increment shall be recorded. As a current settlement increment is flowed through over a six-month period, carrying charges on the net unpaid balance in the Tracker Account shall be computed monthly at the agreed interest rate, in the manner set forth in 18 CFR 154.38(d)(4)(iv)(c).

At the end of each six-month period, Tennessee shall debit or credit to the then current subaccount of its FERC Account 191 ("191 subaccount"), as appropriate, any balance in the Tracker Account. In accordance with 18 CFR 154(d)(4)(iv)(c), carrying charges shall be computed monthly on those balances transferred from the Tracker Account to the 191 subaccount. The rate for the computation of carrying charges shall be the current rate of interest on pipeline refunds set forth in 18 CFR 154.67(d)(2)(iii)(A), with interest compounded in the manner set forth in 18 CFR 154.67(d)(2)(iii)(B). Such carrying charges shall also be debited or credited, as appropriate, to the 191 subaccount.

For purposes of computing the interperiod tax allocation of the unpaid Tracker Account balances and of those balances transferred to the 191 subaccount resulting from Tennessee's inability, for whatever reason, to flow through the exact amount of the current settlement increments and carrying charges thereon, carrying charges shall be computed on 100 percent of the Tracker Account balances and on 100 percent of those balances transferred to the 191 subaccount.

(7) Tenneco agrees that, within ten (10) days after the date on which the Judgment becomes final and no longer subject to further judicial review, it will file a motion pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure requesting dismissal as moot of its petition for review to the United States Court of Appeals for the Fifth Circuit in *Tenneco Inc.* v. *FERC*, No. 81–4049 (filed Feb. 9, 1981).

(8) Tenneco, Channel and Tenneco Oil agree that they will not contest, oppose, intervene in or appeal from any settlement with any other person or entity involved in Commission Docket No. IN79–3, unless such settlement is contrary to the terms and understandings adopted in this Agreement, or unless in Tenneco's judgment, exercised in good faith, such settlement is otherwise adverse to Tenneco's direct interests.

(9) Tenneco, Channel and Tenneco Oil acknowledge that the Commission is settling only the matters referred to herein within the Commission's jurisdiction and within the Commission's authority to settle.

(10) Except as provided in Paragraph (11) below, the Commission, Tenneco, Channel and Tenneco Oil expressly waive and voluntarily relinquish their respective rights to appeal from the Judgment.

(11) In the event that the Commission should modify in any respect the Order, or in the event that the Court does not enter the Judgment or enters a judgment in a form that is not mutually satisfactory to the Commission, Tenneco, Channel and Tenneco Oil, the Commission, Tenneco, Channel and Tenneco Oil are authorized to withdraw their acceptance of this agreement at any time prior to the judgment becoming final and no longer subject to judicial review. In the event Tenneco, Channel and Tenneco Oil exercise such rights to withdraw, this Agreement and the settlement pursuant hereto shall be null and void and without prejudice to Tenneco, Channel and Tenneco Oil, and the Commission will vacate the Order without prejudice and, if the Complaint has been filed, will join in moving for dismissal of the Complaint without prejudice, and in requesting the Court to set aside, vacate, and terminate any judgment theretofore entered.

(12) This Agreement represents a negotiated settlement in the public interest for the sole purpose of settling this action and the proceedings and matters described in Paragraph (2) of this Article VI, insofar as they relate to Tenneco, Channel and Tenneco Oil, and to the other persons or entities described therein. With respect to the provisions of Sections I, II and III of the Judgment, the Commission, Tenneco, Channel and Tenneco Oil acknowledge that:

A. The intent thereof is to enjoin Tenneco and Channel against engaging in acts or conduct proscribed by the terms thereof and the statutes and regulations set out therein, but is not to reach or to apply to:

(1) Inadvertent acts or conduct within the literal terms of the provisions of Sections I, II, and III of the Judgment; or to

(2) Acts or conduct engaged in by Tenneco or Channel in the belief that such acts or conduct were not within the purview thereof, or were exempt therefrom or were otherwise in any respect lawful, provided that:

a. Such belief or beliefs were held in good faith; and

b. Such belief or beliefs could have been held by a reasonable person or persons acting in the same or similar circumstances;

B. Nothing therein is intended to limit the utilization by Tenneco, Channel and Tenneco Oil, or any of their divisions, subsidiaries or affiliates, of statutory or regulatory provisions for "self implementing" transactions pursuant to generic certificate authority, or which require no certificate authority or no prior certificate authority.

Further, the Commission agrees that it will not initiate proceedings to enforce the terms of such injuctions against Tenneco or Channel except upon ten days prior written notice to them of the Commission's intent so to act, and after an opportunity for consultation between the Commission and Tenneco and/or channel with respect to any matter concerning which enforcement of such injunctions is to be initiated.

(13) The provisions of this Agreement shall not become operative until all judicial and Commission orders contemplated by this Agreement are final and no longer subject to judicial review, expect that interest provided for in Paragraph (6) above, shall begin to accrue from the date of filing of this Agreement with the Court.

(14) Solely for the purposes of (a) effectuating the full and final settlement of all of the claims set forth in the Commission's Complaint and the matters and proceedings described in this Agreement, and (b) avoiding the termination of a source of supply of natural gas to the intrastate customers of Channel, it has been found by the Commission that all interests of Atlantic Richfield Company, Mobil Producing Texas & New Mexico, Inc., Exxeter Petroleum Company, Tenneco Oil Company and Peninsula Resources Company, and the interests of their respective predecessors, successors, assigns, and reversioners, if any, in the fields and units described below, from which natural gas is being sold or is contracted to be sold to Channel on the effective date of this Agreement, are not, from the effective date of this Agreement forward, deemed to be dedicated to interstate commerce within the

meaning of the NGA or committed or dedicated to interstate commerce within the meaning of the NGPA, and that Tenneco, through Channel, is authorized to continue to pay to the producers of such gas the maximum lawful price under Sections 105 or 106 of the NGPA, or any other maximum lawful price under the NGPA applicable to gas not committed or dedicated to interstate commerce:

(a) All zones below what is known as "Zone 20–C4" within the areal limits of the Seeligson Unit, Jim Wells County, Texas;

(b) The Riverside Field, Nueces County, Texas; and

(c) The Brayton Field, Nueces, County, Texas.

Nothing in this provision shall affect in any way whatsoever any liabilities or obligations of any person or entity, other than Tenneco, Channel or Tenneco Oil and their subsidiaries, affiliates and divisions, and their respective officers, directors, agents, servants, representatives, successors, or assigns, arising out of or in connection with any sales of natural gas prior to the effective date of this Agreement to an intrastate purchaser from the fields and units, or portions thereof described in Article VI(14)(a) through (c) above.

(15) It is agreed that all documents provided to the Commission by Tenneco, Channel and Tenneco Oil, or any of their divisions, subsidiaries or affiliates, and any copies of such documents made by the Commission, are investigatory records compiled for law enforcement purposes within the meaning of 5 U.S.C. 552(b)(7). The Commission agrees that, should any person, party, association or non-federal governmental body or authority make a request under any applicable statute or regulation to the Commission to inspect, review or obtain such documents, the Commission shall forthwith inform Tenneco, Channel and Tenneco Oil of such request, shall consider all arguments against release, and shall not release records which are exempt from compulsory disclosure under one or more of the exemptions listed in 5 U.S.C. 552(b)(7)(A)–(F), except to the extent that the Commission, in its discretion, in good faith determines that disclosure is required by the public interest.

(16) Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts this Stipulation and Consent Agreement on that party's behalf.

Agreed to and accepted this 4th day of October, 1982.

Federal Energy Regulatory Commission.

Kenneth F. Plumb,

Secretary.

Tenneco Inc.

Walter W. Sapp,

Senior Vice President & General Counsel.

Channel Industries Gas Company.

Joseph L. Parrish, Jr.,

President.

Tenneco Oil Company.

Vernon M. Turner,

Senior Vice President & General Counsel.

Exhibit B

United States District Court for the District of Columbia

Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, Plaintiff, v. TENNECO INC., CHANNEL INDUSTRIES GAS COMPANY and TENNECO OIL COMPANY, Defendants, Civil Action No. —.

Complaint for Injunctive and Other Equitable Relief

Plaintiff Federal Energy Regulatory Commission (the "Commission"), for its Complaint, alleges upon information and belief that:

1. The Commission brings this action pursuant to authority conferred by Section 20 of the Natural Gas Act ("NGA"), 15 U.S.C. 717s, Section 504 of the Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. 3414, and Sections 401(i) and 402(a)(2)(B) of the Department of Energy Organization Act, 42 U.S.C. (Supp. II) 7171(i) and 7172(a)(2)(B), and seeks (a) an injunction permanently restraining and enjoining defendant Tenneco Inc. ("Tenneco") from (i) violating Section 4(c) of the NGA, 15 U.S.C. 717c(c), and §§ 154.21, 154.22, 154.26 and 154.31 through 154.41 of the Commission's regulations thereunder, 18 CFR 154.21, 154.22, 154.26 and 154.31 through 154.51, respectively, (ii) violating Section 7(c)(1)(A) of the NGA, 15 U.S.C. 717f(c)(1)(A), and Section 157.5 of the Commission's regulations thereunder, 18 CFR 157.5, (iii) violating Section 7(b) of the NGA, 15 U.S.C. 717f(b), and § 157.5 of the Commission's regulations thereunder, 18 CFR 157.5, (b) an injunction permanently restraining and enjoining Tenneco and defendant Channel Industries Gas Company ("Channel") from aiding and abetting the violation of Section 7(b) of the NGA, 15 U.S.C. 717f(b), and § 157.30 of the Commission's regulations thereunder, 18 CFR 157.30, by any independent producer of natural gas, (c) an injunction permanently restraining and enjoining Channel from aiding and abetting the violation of Section 504(a) of the NGPA, 15 U.S.C. 3414(a), by aiding and abetting the collection by any independent producer of natural gas of any price in excess of the maximum lawful price pursuant to Section 104 of the NGPA, 15 U.S.C. 3314, and §§ 270.101 and 271.402 of the Commission's regulations thereunder, 18 CFR 270.101 and 271.402, (d) an injunction permanently restraining and enjoining defedant Tenneco Oil Company ("Tenneco Oil") from violating Section 7(b) of the NGA, 15 USC 717f(b), and § 157.30 of the Commission's regulations thereunder, 18 CFR 157.30 and (e) an order granting such other and further equitable relief as the court may deem just and proper, including but not limited to restitution to certain interstate purchasers of natural gas.

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to Section 22 of the NGA, 15 U.S.C. 717u, Section 504 of the NGPA, 15 U.S.C. 3414 and 28 U.S.C. 1345.

3. Venue is proper in this Court pursuant to Section 22 of the NGA, 15 U.S.C. 717u, and Section 504(b) of the NGPA, 15 U.S.C. 3414(b).

The Plaintiff

4. The Commission is an independent regulatory agency of the United States established by the Department of Energy Organization Act, 42 U.S.C. (Supp. II) 7101 *et seq.* Section 402 of the Department of Energy Organization Act, 42 U.S.C. (Supp. II) section 7172, transferred to the Commission many of the functions and responsibilities of its predecessor, the Federal Power Commission, including those contained in the NGA. The Commission began operations on October 1, 1977. Its principal offices are located at 825 North Capitol Street, N.E., Washington, D.C. 20426. (Hereinafter, the term "Commission" shall refer to the Federal Energy Regulatory Commission or the Federal Power Commission, as appropriate.)

The Defendants

5. Tenneco is a Delaware corporation which maintains its principal place of business in the Tenneco Building, Houston, Texas, and which transacts business in various jurisdictions throughout the United States. Tennessee Gas Pipeline Company is an interstate natural gas pipeline company and is a division of Tenneco. Tennessee Gas Pipeline Company is the sucessor in interest to Tennessee Gas and Transmission Company and Tennessee Gas Transmission Company. (Hereinafter the term "Tenneco" will refer to Tenneco, its division Tennessee Gas Pipeline Company, and Tennessee Gas Pipeline Company's predecessors in interest.)

6. Channel is a Delaware corporation which maintains its principal place of business in the Tenneco Building, Houston, Texas, and which transacts business in the State of Texas. Channel is an intrastate natural gas pipeline company and is a wholly owned subsidiary of Tenneco Corporation, which is a wholly owned subsidiary of Tenneco.

7. Tenneco Oil is a Delaware corporation which maintains its principal place of business in the Tenneco Building, Houston, Texas, and which transacts business in various jurisdictions throughout the United States. Tenneco Oil is a wholly owned subsidiary of Tenneco Corporation, which is a wholly owned subsidiary of Tenneco.

8. At all times relevant to the claims stated in this Complaint, (a) Tenneco and Channel, and each of them, have engaged and continue to engage in the transportation of natural gas, and (b) Tenneco Oil has engaged in and continues to engage in the production and processing of natural gas.

Statutes and Regulations

9. The Commission administers, *inter alia*, the NGA, 52 Stat. 821 (1938), 15 U.S.C. 717 *et seq.*, which established a program for

regulating the transportation and sale of natural gas for resale in interstate commerce.

10. Section 4(c) of the NGA, 15 U.S.C. 717c(c), provides in relevant part:

Under such rules and regulations as the Commission may prescribe, every natural gas company shall file with the Commission * * * schedules showing all rates and charges for any transportation or sale subjects to the jurisdiction of the Commission, and the classifications, practices and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications and services.

11. Pursuant to authority conferred by Section 16 of the NGA, 15 U.S.C. 7170, the Commission promulgated regulations implementing Section 4(c), which are set forth in part at 18 CFR 154.21, 154.22, 154.26, and 154.31 through 154.41. 18 CFR 154.21, 154.22, 154.26 and 154.31 through 154.41 were in effect at all times relevant to the claims set forth in this Complaint and are still in effect.

12. Section 7(c)(1)(A) of the NGA, 15 U.S.C. 717f(c)(1)(A), provides in relevant part:

No natural gas company * * * shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission . . . unless there is in force with respect to such natural gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations * * *.

13. Pursuant to authority conferred by Section 16 of the NGA, the Commission promulgated regulations implementing Section 7(c)(1)(A) of the NGA, which are set forth in part at 18 CFR 157.5. 18 CFR 157.5 was in effect at all times relevant to the claims set forth in this Complaint and is still in effect.

14. Section 7(b) of the NGA, 15 U.S.C. 717f(b), provides:

No natural gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first hand and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

15. Pursuant to authority conferred by Section 16 of the NGA, the Commission promulgated regulations implementing Section 7(b) of the NGA, which are set forth in part at 18 CFR 157.30. 18 CFR 157.30 was in effect at all times relevant to the claims set forth in this Complaint and is still in effect.

16. Section 4(a) of the NGA, 15 U.S.C. 717c, provides that any sale of natural gas subject to the jurisdiction of the Commission at a rate or charge that is not just and reasonable is unlawful. The just and reasonable rates applicable to the sales of natural gas under the NGA to Channel described below are set forth in the Commission's regulations and in various opinions and orders issued by the Commission.

17. At all relevant times, (a) Tenneco was a natural gas company within the meaning of Sections 4(c), 7(c)(1)(A) and 7(b) of the NGA, and was subject to the requirements of Sections 4(c), 7(c)(1)(A) and 7(b) of the NGA and the Commission's regulations thereunder, as set forth in paragraphs 10 through 15, above, and (b) Tenneco Oil was a natural gas company within the meaning of Section 7(b) of the NGA, and was subject to the requirements of Section 7(b) of the NGA and the Commission's regulations thereunder, as set forth in paragraphs 14 and 15, above.

18. The Commission administers, *inter alia*, the NGPA, 92 Stat. 33650 (1978), 15 U.S.C. 3301 *et seq.*, which established a program for regulating the sale of natural gas in interstate and intrastate commerce.

19. Section 504(a) of the NGPA, 15 U.S.C. 3414, provides in relevant part:

It shall be unlawful for any person * * * to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this Act * * *.

20. Section 104 of the NGPA, 15 U.S.C. 3314, establishes, pursuant to a pricing formula, the maximum lawful price at which natural gas "committed or dedicated to interstate commerce" as of November 8, 1978 may be sold in any "first sale" of such natural gas.

21. Section 2(18)(A)(ii) of the NGPA, 15 U.S.C. 3301(18)(A)(ii), defines natural gas "committed or dedicated to interstate commerce" as:

Natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act) under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act.

22. Section 2(21) of the NGPA, 15 U.S.C. 3301(21), defines a "first sale" of natural gas as *inter alia*, any sale of any volume of natural gas to any interstate pipeline or intrastate pipeline.

23. Pursuant to authority conferred by Section 16 of the NGA and Section 501 of the NGPA, 15 U.S.C. 3411, the Commission promulgated regulations implementing Section 104 of the NGPA, which are set forth in part at 18 CFR 270.101 and 271.402. Those Sections have been in effect since December 1, 1978 and are still in effect.

24. 18 CFR §§ 270.101 and 271.402 set forth the maximum lawful price for the first sale of natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the NGA was in effect on November 8, 1978.

25. At all relevant times, the sales of natural gas to Channel described below were subject to the requirements of Section 504(a) and 104 of the NGA, and §§ 270.101 and 271.402 of the Commission's regulations thereunder.

First Through Fourth Claims

Against Tenneco under Section 4(c) of the NGA and §§ 154.21, 154.22, 154.26 and 154.31 through 154.41 of the Commission's regulations

26. The Commission re-alleges paragraphs 1 through 25 of this Complaint.

27. During the early 1960's, Tenneco was overcommitted with respect to its contractual obligations to purchase natural gas and was unable to purchase or physically "take" the minimum daily contract quantities of natural gas set forth in certain of its natural gas purchase and sales contracts.

28. Consequently, Tenneco attempted to renegotiate provisions within those contracts which required it to pay for the natural gas not taken, in order to relieve its "take-or-pay" situation.

29. In 1963, Tennessee reached agreement with producers in the Seeligson Field Unit, Jim Wells County, Texas, limiting the daily contract quantities Tennessee would purchase through 1965. At the same time, however, the producers notified Tennessee that beginning March, 1966, their contractual rights to require Tennessee to purchase greater daily contract quantities would be invoked.

30. In late 1964, after further efforts to relieve its take-or-pay situation, Tenneco applied for Commission authorization to abandon a 316-mile segment of its interstate pipeline system, which segment was to be known as the A–S Line.

31. In its abandonment application, Tenneco stated that it had been unsuccessful in purchasing the large, uncommitted reserves along the A–S Line, and the remaining small reserves (each on the order of 1–5 billion cubic feet ("Bcf")) were unattractive because of location and deliverability. Tenneco also stated that the capacity of its mainline system, which lay north of and parallel to the A–S Line, substantially exceeded it contractual obligations in the area.

32. In its abandonment application, Tenneco proposed to transfer ownership of the A–S Line to Channel for wholly intrastate operation. The A–S Line, Tenneco submitted, could better function as an intrastate facility because Channel would be in a position to purchase the remaining reserves on a short-term basis, *i.e.*, on the basis of daily volume production capability, rather than on the basis of a recoverable gas reserves ratio.

33. On January 12, 1965, the Commission issued an order approving the abandonment of the A–S Line. Tenneco conveyed the line to Channel, and Channel commenced its operation of the A–S Line, in April, 1965.

34. Following the commencement of its operation of the A–S Line, Channel entered into contractual commitments which contemplated the use of Tenneco's jurisdictional facilities as described below.

35. Effective January 30, 1965, Channel assumed the obligation to pay back to Tenneco approximately 11.3 Bcf of an excess of gas which Tenneco had previously delivered for the account of another of Tenneco's subsidiaries, Bayou Hyrdocarbons, Inc. (Bayou).

36. At the same time, Channel acquired Bayou's right to receive gas from some 31 producers situated along Tennessee's mainline system. Tenneco and Channel entered into an "exchange" agreement in January, 1965, pursuant to which these producers delivered natural gas purchased by Channel directly into Tenneco's mainline system, for Channel's account.

37. On April 26, 1965, Channel executed a purchase and sale agreement with the Celanese Corporation of America (Celanese), for the delivery of natural gas to the Celanese

plant at Bishop, Texas (the Celanese Bishop Contract). Channel, however, did not have the necessary facilities to deliver natural gas to the Bishop plant.

38. On March 31, 1966, Channel entered into an exchange agreement with Tenneco, pursuant to which Tenneco would deliver, for Channel's account, the Celanese Bishop Contract quantity of natural gas to the Bishop plant. Between 1966 and 1975, Tenneco delivered approximately 65 Bcf of its system supply natural gas to Celanese for Channel's account. While the exchange agreement provided for an exchange charge to be paid to Tenneco, the exchange charge was never paid.

39. While the above described commitments were being undertaken by Channel, Tenneco, still facing the prospect of having to take increased daily contract quantities beginning March, 1966, coordinated its efforts with Channel to reduce or eliminate Tenneco's take-or-pay exposure. The efforts involved:

(a) Negotiating agreements between Tenneco and its contract producers in the Texas Gulf Coast area pursuant to which certain quantities of natural gas would be made available for sale to other purchasers in accordance with so-called "surplus gas" [1] provisions, or similar contractual devices;

(b) Negotiating reductions in the minimum daily contract quantities which Tenneco would be required to purchase; and

(c) Negotiating agreements between Channel and the producers pursuant to which Channel would buy that "surplus" gas, at the same price, or at a lower price than, Tenneco would have paid for it.

40. Accordingly, Tenneco and Channel renewed negotiations with the producers then under contract to Tenneco, and between 1965 and 1967, many of them entered into such contracts to sell their "surplus gas" to Channel. With few exceptions, the contracts between Channel and the producers were subordinate to the contracts between the producers and Tenneco. The sales followed the following basic patterns:

(a) Natural gas was sold to Channel pursuant to a "surplus" provision in the contract between the producer and Tenneco;

(b) Natural gas was sold to Channel from reserves which the producer and Tenneco purported to remove contractually from dedication to interstate commerce;

(c) Natural gas was sold to Channel in excess of the requirements of a contract between the producer and Tenneco; and

(d) Natural gas was sold to Channel after outright termination of a gas sales contract between Tenneco and the producer.

41. In no case did the producers obtain Commission authorization, pursuant to Section 7(b) of the NGA, for the abandonment of service to Tenneco resulting from the sales of natural gas to Channel.

42. By 1967, Channel faced a serious gas supply deficiency. Therefore, the gas diverted to Channel as a result of the "surplus" sales described above served not only to alleviate Tennessee's take-or-pay problems, but also enabled Channel to meet its contractual obligations. In addition, Tenneco and Channel entered into additional transactions designed to resolve Channel's supply deficiency, as described below.

43. Pursuant to an exchange agreement entered into in early 1967 between Channel and Brazos Oil and Gas Co. (Brazos), Brazos delivered for Channel's account approximately 40,000 Mcf (thousand cubic feet) of natural gas per day to Phillips Petroleum Company's Sweeny Processing Plant, in Brazoria County, Texas. This natural gas was redelivered to Channel's customers at the outlet of the Sweeny Plant. In exchange, Channel delivered an equal quantity of natural gas to Brazos near Tenneco Oil's Leabo Plant, in Matagorda County, Texas. This exchange was accomplished by the delivery by Tenneco of system supply gas to Brazos for Channel's account. Channel prepared an exchange agreement with Tenneco providing for an exchange charge to be paid to Tennessee. Tenneco, however, never executed the agreement. Between 1967 and 1975, Tenneco delivered in excess of 98 Bcf of system supply gas to Brazos for Channel's account; Channel paid Tenneco nothing for transportation in connection with this service.

44. Both Channel and Tenneco had facilities to receive natural gas at the tailgates of three gas processing plants, the Plomo Plant, the Leabo Plant, and the Seeligson Plant. Behind each plant, both Tenneco and Channel had natural gas reserves under contract. From time to time, depending upon their operational needs, the entire stream of residue gas at the plant tailgates would "swing" to either Tenneco or Channel. Between 1966 and 1975, Channel received, at these plant outlets, about 30 Bcf of natural gas dedicated to Tenneco. No agreement covering these transactions was executed or filed with or approved by the Commission.

45. In July, 1967, Channel contracted to supply the plant fuel requirements of Cameron Iron Works, Inc. (Cameron), an equipment supplier situated on Tenneco's mainline system near Cypress, Texas. Tenneco's system supply gas was to be used to effect the sale. No exchange or transportation agreement covering the Cameron deliveries was executed or filed with or approved by the Commission. Tenneco delivered in excess of 6.6 Bcf of gas to Cameron for Channel's account between 1967 and 1975. No fee was charged by or paid to Tenneco for transportation in connection with this service.

46. The Channel and Tenneco pipeline systems were operated on an integrated basis between 1965 and 1975. In addition to Bayou's gas purchase contracts which Channel had acquired and pursuant to which natural gas was flowing to Tenneco, Channel, after 1965, continued to contract to buy natural gas from producers situated along Tenneco's mainline system. In "exchange" for all of Tenneco's deliveries to or for the account of Channel, including its deliveries described herein, Channel caused its contract producers to deliver natural gas directly into Tenneco's mainline system, at points in Texas ranging from Corpus Christi to Carthage. By 1975, some 104 "off-system" Channel producers had delivered more than 194 Bcf of natural gas to Tenneco for Channel's account.

47. Most of the "surplus gas" sales to Channel continued throughout the same period until Tenneco's curtailment in 1973, when it began taking most of the natural gas the producers could deliver, and deliveries under most of the "surplus" contracts with Channel were terminated.

48. In some instances, Channel continued to purchase natural gas from the producers during Tenneco's curtailment period (1973–1978), and some purchases are continuing to the present date.

49. The purchases by Channel after 1973 were generally at prices in excess of those which could have been obtained by the producer if the natural gas had been sold to Tenneco pursuant to the applicable rate schedule, or the maximum lawful prices as established by the applicable area rate, national rate or NGPA.

50. From 1965 to the present time, over 450 Bcf of natural gas was sold to Channel by means of the transactions described above.

51. Tenneco failed to file with the Commission its agreement with Bayou to transport and/or deliver natural gas in interstate commerce on Bayou's behalf, thereby violating Section 4(c) of the NGA and the Commission's regulations thereunder. (First Claim)

52. Tenneco failed to file with the Commission its 1966 agreement with Channel to transport and/or exchange natural gas in interstate commerce to or with Celanese, for Channel's account, thereby violating Section 4(c) of the NGA and the Commission's regulations thereunder. (Second Claim)

53. Tenneco failed to file with the Commission its agreement with Channel to transport natural gas in interstate commerce to Brazos for Channel's account, thereby violating section 4(c) of the NGA and the Commission's regulations thereunder. (Third Claim)

54. Tenneco failed to file with the Commission an agreement with Channel to transport on Channel's behalf natural gas in interstate commerce to Cameron, thereby violating Section 4(c) of the NGA and the Commission's regulations thereunder. (Fourth Claim)

55. Unless enjoined, Tenneco will commit further violations of Section 4(c) of the NGA and the Commission's regulations thereunder

Fifth Through Eighth Claims

Against Tenneco under Section 7(c)(1)(A) of the NGA and § 157.5 of the Commission's regulations thereunder

56. The Commission re-alleges paragraphs 1 through 50 of this Complaint.

57. Tenneco delivered and transferred, in interstate commerce, approximately 140 Bcf of natural gas to Bayou without a certificate therefor, thereby violating Section 7(c)(1)(A) of the NGA and the Commission's regulations thereunder. (Fifth Claim)

58. Tenneco transported and/or exchanged in excess of 90 Bcf of natural gas in interstate

[1] "Surplus gas" sales in this context refers to sales of natural gas pursuant to provisions in a producer's contract with an interstate pipeline which permit the producer to sell to other purchasers volumes in excess of specified quantities agreed upon by the producer and the interstate pipeline.

commerce to or with Brazos, for the account of Channel, without a certificate therefor, thereby violating Section 7(c)1)(A) of the NGA and the Commission's regulations thereunder. (Sixth Claim)

59. Tenneco Transported in excess of 65 Bcf of natural gas in interstate commerce to Celanese, for the account of Channel, without a certificate therefor, thereby violating Section 7(c)(1)(A) of the NGA and the Commission's regulations thereunder. (Seventh Claim)

60. Tenneco transported in interstate commerce in excess of 6 Bcf of natural gas to Cameron, for the account of Channel, without a certificate therefor, thereby violating Section 7(c)(1)(A) of the NGA and the Commission's regulations thereunder. (Eighth Claim)

61. Unless enjoined, Tenneco will commit further violations of Section 7(c)(1)(A) of the NGA and the Commission's regulations thereunder.

Ninth Through Thirteenth Claims

Against Tenneco under Section 7(b) of the NGA and § 157.5 of the Commission's regulations thereunder

62. The Commission re-alleges paragraphs 1 through 50 of this Complaint.

63. Tenneco delivered and transferred, or caused to be delivered and transferred, to or for the account of Channel, at the outlet of the Plomo Plant, in excess of 9.8 Bcf of natural gas out of gas purchased for and dedicated to interstate commerce, thereby violating Section 7(b) of the NGA and the Commission's regulations thereunder. (Ninth Claim)

64. Tenneco delivered and transferred, or caused to be delivered and transferred, to or for the account of Channel, at the outlet of the Leabo Plant, in excess of 9.1 Bcf of natural gas out of gas purchased for and dedicated to interstate commerce, thereby violating Section 7(b) of the NGA and the Commission's regulations thereunder. (Tenth Claim)

65. Tenneco delivered and transferred, or caused to be delivered and transferred, to or for the account of Channel, at the outlet of the Seeligson Plant, in excess of 10 Bcf of natural gas out of gas purchased for and dedicated to interstate commerce, thereby violating Section 7(b) of the NGA and the Commission's regulations thereunder. (Eleventh Claim)

66. Tenneco delivered and transferred, or caused to be delivered and transferred, to or for the account of Channel, at the inlet of the Plomo Plant, in excess of 6.4 Bcf of natural gas out of gas purchased for and dedicated to interstate commerce, thereby violating Section 7(b) of the NGA and the Commission's regulations thereunder. (Twelfth Claim)

67. Tenneco caused Coastal States Gas Company ("Coastal") to deliver and transfer to Channel, at the outlet of Coastal's plant, in excess of 4.6 Bcf of natural gas out of gas committed and dedicated to interstate commerce, thereby violating Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirteenth Claim)

68. Unless enjoined, Tenneco will commit further violations of Section 7(b) of the NGA and the Commission's regulations thereunder.

Fourteenth Through Forty-Third Claims

Against Tenneco and Channel, and each of them, for aiding and abetting violations of Section 7(b) of the NGA and of § 157.30(a) of the Commission's regulations thereunder

69. The Commission re-alleges paragraphs 1 through 50 of this Complaint.

70. Tenneco and Channel, and each of them, aided and abetted Amoco Production Company ("Amoco") in the diversion to Channel of about 17 Bcf of natural gas from the Riverside and O'Neil Fields, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Fourteenth Claim)

71. Tenneco and Channel, and each of them, aided and abetted Amoco in the diversion of Channel of about 1.6 Bcf of natural gas from the Chesterville Field, Colorado and Wharton Counties, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Fifteenth Claim)

72. Tenneco and Channel, and each of them, aided and abetted Atlantic Richfield Company ("Arco") in the diversion to Channel of about 47 Bcf of natural gas from the Seeligson Field, Jim Wells County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Sixteenth Claim)

73. Tenneco and Channel, and each of them, aided and abetted Champlin Petroleum Company in the diversion to Channel and Celanese of about 37.1 Bcf of natural gas from the Stratton-Agua Dulce Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Seventeenth Claim)

74. Tenneco and Channel, and each of them, aided and abetted Cities Service Gas Company in the diversion to Channel of about .49 Bcf of natural gas from the Stedman Island Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Eighteenth Claim)

75. Tenneco and Channel, and each of them, aided and abetted Conoco Inc. ("Conoco") in the diversion to Channel of about .6 Bcf of natural gas from the Cold Springs Field, San Jacinto County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Nineteenth Claim)

76. Tenneco and Channel, and each of them, aided and abetted Conoco in the diversion to Channel of about 1.9 Bcf of natural gas from the Chesterville Field, Colorado and Wharton Counties, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twentieth Claim)

77. Tenneco and Channel, and each of them, aided and abetted Corpus Christi Leaseholds, Inc. in the diversion to Channel of about .14 Bcf of natural gas from the Flores Field, Starr County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-first Claim)

78. Tenneco and Channel, and each of them, aided and abetted Forest Oil Corporation in the diversion to Channel of about 1.2 Bcf of natural gas from the Brayton Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-second Claim)

79. Tenneco and Channel, and each of them, aided and abetted Getty Oil Company in the diversion to Channel of about 43.3 Bcf of natural gas from the Bay City Field, Matagorda County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-third Claim)

80. Tenneco and Channel, and each of them, aided and abetted Goldking Production Company ("Goldking") in the diversion to Channel of about .8 Bcf of natural gas from the North Garwood Field, Colorado County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-fourth Claim)

81. Tenneco and Channel, and each of them, aided and abetted Kirby Petroleum Company in the diversion to Channel of about 1.65 Bcf of natural gas from the Chesterville Field, Colorado and Wharton Counties, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-fifth Claim)

82. Tenneco and Channel, and each of them, aided and abetted Logue & Patterson in the diversion to Channel of about .72 Bcf of natural gas from the Agua Dulce Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-sixth Claim)

83. Tenneco and Channel, and each of them, aided and abetted Mobil Oil Corporation ("Mobil") and others in the diversion to Channel of about 15.9 Bcf of natural gas from the Chesterville Unit, Colorado and Wharton Counties, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's

regulations thereunder. (Twenty-seventh Claim)

84. Tenneco and Channel, and each of them, aided and abetted Mobil in the diversion to Channel of about 21.6 Bcf of natural gas from the Edinburg Field, Hidalgo County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-eighth Claim)

85. Tenneco and Channel, and each of them, aided and abetted Mobil in the diversion to Channel of about 10.7 Bcf of natural gas from the Stedman Island Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Twenty-ninth Claim)

86. Tenneco and Channel, and each of them, aided and abetted Mobil in the diversion to Channel of about 97 Bcf of natural gas from the Seeligson Field, Jim Wells County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirtieth Claim)

87. Tenneco and Channel, and each of them, aided and abetted Mobil and others in the diversion to Channel of about 49.6 Bcf of natural gas from the Seeligson Unit, Jim Wells County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-first Claim)

88. Tenneco and Channel, and each of them, aided and abetted Mobil in the diversion to Channel of about 12.8 Bcf of natural gas from the Southwest Pheasant Field, Matagorda, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-second Claim)

89. Tenneco and Channel, and each of them, aided and abetted Monsanto Company in the diversion to Channel of about 1.3 Bcf of natural gas from the Chesterville Field, Colorado and Wharton Counties, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-third Claim)

90. Tenneco and Channel, and each of them, aided and abetted Arco in the diversion to Channel of about 11.6 Bcf of natural gas from the Southwest Pheasant Field, Matagorda County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-fourth Claim)

91. Tenneco and Channel, and each of them, aided and abetted Puenticitas Oil Company in the diversion to Channel of about 10.1 Bcf of natural gas from the Brayton-Agua Dulce Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-fifth Claim)

92. Tenneco and Channel, and each of them, aided and abetted Shell Oil Company ("Shell") in the diversion to Channel of about 4.1 Bcf of natural gas from the Chesterville Field, Colorado and Wharton Counties, Texas, which natural gas was committed to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-sixth Claim)

93. Tenneco and Channel, and each of them, aided and abetted Shell in the diversion to Channel of about .14 Bcf of natural gas from the Seeligson Field, Jim Wells County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-seventh Claim)

94. Tenneco and Channel, and each of them, aided and abetted South Texas Oil & Gas Producing Company, Inc. in the diversion to Channel of about 2 Bcf of natural gas from the Brayton Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-eighth Claim)

95. Tenneco and Channel, and each of them, aided and abetted J. C. Storm in the diversion to Channel of about 1.2 Bcf of natural gas from the Brayton Field, Nueces County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Thirty-ninth Claim)

96. Tenneco and Channel, and each of them, aided and abetted Sun Oil Company ("Sun") in the diversion to Channel of about 70.7 Bcf of natural gas from the Seeligson Field, Jim Wells County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Fortieth Claim)

97. Tenneco and Channel, and each of them, aided and abetted Tenneco Oil in the diversion to Channel of about .3 Bcf of natural gas from the Seeligson Field, Jim Wells County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Forty-first Claim)

98. Tenneco and Channel, and each of them, aided and abetted Arco in the diversion to Channel of about 8 Bcf of natural gas from the Edinburg Field, Hidalgo County, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Forty-second Claim)

99. Tenneco and Channel, and each of them, aided and abetted Amerada Petroleum Corporation in the diversion to Channel of about 1.4 Bcf of natural gas from the Chesterville Field, Colorado and Wharton Counties, Texas, which natural gas was committed and dedicated to interstate commerce, and which diversion constituted a violation of Section 7(b) of the NGA and the Commission's regulations thereunder. (Forty-third Claim)

100. Unless enjoined, Tenneco and Channel, and each of them, will aid and abet further violations of Section 7(b) of the NGA and the Commission's regulations thereunder.

Forty-Fourth Through Fiftieth Claims

Against Channel or aiding and abetting violations of Section 504(a) of the NGA and the Commission's regulations thereunder

101. The Commission re-alleges paragraphs 1 through 50 of this Complaint.

102. Channel aided and abetted violations by Amoco of Section 504(a) of the NGPA and the Commission's regulations thereunder in connection with sales of natural gas from the O'Neil Field, Nueces County, Texas. (Forty-fourth Claim)

103. Channel aided and abetted violations by Arco of Section 504(a) of the NGPA and the Commission's regulations thereunder in connection with sales of natural gas from the Seeligson Field, Jim Wells County, Texas. (Forty-fifth Claim)

104. Channel aided and abetted violations by Arco of Section 504(a) of the NGPA and the Commission's regulations thereunder in connection with sales of natural gas from the Southwest Pheasant Field, Matagorda County, Texas. (Forty-sixth Claim)

105. Channel aided and abetted violations by Goldking of Section 504(a) of the NGPA and the Commission's regulations thereunder in connection with sales of natural gas from the North Garwood Field, Colorado County, Texas. (Forty-seventh Claim)

106. Channel aided and abetted violations by Peninsula Resources Corporation of Section 504(a) of the NGPA and the Commission's regulations thereunder in connection with sales of natural gas from the Riverside Field, Nueces County, Texas. (Forty-eighth Claim)

107. Channel aided and abetted violations by Sun of Section 504(a) of the NGPA and the Commission's regulations thereunder in connection with sales of natural gas from the Seeligson Field, Jim Wells County, Texas. (Forty-ninth Claim)

108. Channel aided and abetted violations by Mobil of Section 504(a) of the NGA and the Commission's regulations thereunder in connection with sales of natural gas from the Southwest Pheasant Field, Matagorda County, Texas. (Fiftieth Claim)

109. Unless enjoined, Channel will aid and abet further violations of Section 504(a) of the NGPA and the Commission's regulations thereunder.

Fifty-First Claim

Against Tenneco Oil for violating Section 7(b) of the NGA and the Commission's regulations thereunder

110. The Commission re-alleges paragraphs 1 through 50 and 97 of this Complaint.

109. Unless enjoined, Tenneco Oil will commit further violations of Section 7(b) of

the NGA and the Commission's regulations thereunder.

Wherefore, the Commission requests:

A. An injunction permanently restraining and enjoining Tenneco and its officers, directors, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, and all persons in active concert or participation with them, or acting by, through or under them or any of them, or by or through their orders, from violating, causing the violation of or aiding and abettig the violation of Section 4(c) of the NGA and §§ 154.21, 154.22, 154.26 and 154.31 through 154.41 of the Commission's regulations thereunder;

B. An injunction permanently restraining and enjoining Tenneco and its officers, directors, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, and all persons in active concert or participation with them, or acting by, through or under them, or any of them, or by or through their orders, from violating, causing the violation of or aiding and abetting the violation of Section 7(c)(1)(A) of the NGA and § 157.5 of the Commission's regulations thereunder;

C. An injunction permanently restraining and enjoining Tenneco and its officers, directors, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, and all persons in active concert or participation with them, or acting by, through or under them, or any of them, or by or through their orders, from violating, causing the violation of or aiding and abetting the violation of Section 7(b) of the NGA and § 157.5 of the Commission's regulations thereunder;

D. An injunction permanently restraining and enjoining Tenneco and Channel, and each of them, and their respective officers, directors, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, and all persons in active concert or participation with them, or acting by, through or under them or any of them, or by or through their orders, from causing the violation of or aiding and abetting the violation of Section 7(b) of the NGA and § 157.30(a) of the Commission's regulations thereunder;

E. An injunction permanently restraining and enjoining Channel and its officers, directors, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, and all persons in active concert or participation with them, or acting by, through or under them, or any of them, or by or through their orders, from causing the violation of or aiding and abetting the violation of Section 504(a) of the NGPA, by aiding and abetting the collection of any price in excess of the maximum lawful price pursuant to Section 104 of the NGPA, and §§ 270.101 and 271.402 of the Commission's regulations thereunder;

F. An injunction permanently restraining and enjoining Tenneco Oil and its officers, directors, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, and all persons in active concert or participation with them, or acting by, through or under them, or any of them, or by or through their orders, from violating, causing the violation of or aiding and abetting the violation of Section 7(b) of the NGA and § 157.30 of the Commission's regulations thereunder; and

G. An order granting such other and further equitable relief as the Court may deem just and proper, including but not limited to restitution to certain interstate purchasers of natural gas.

Gary Lloyd,

Deputy Assistant General Counsel for Enforcement.

James H. McGrew,

Michael T. Mishkin,

Attorneys for Plaintiff Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Suite 3100, Washington, D.C. 20426, Tel: (202) 357-5612.

Dated: Washington, D.C., 1982.

Exhibit C

United States District Court for the District of Columbia

Federal Energy Regulatory Commission, Plaintiff, v. Tenneco Inc., Channel Industries Gas Company and Tenneco Oil Company, Defendants, Civil Action No. —.

Judgment Approving Stipulation and Consent Agreement

Plaintiff Federal Energy Regulatory Commission ("Commission") having filed its Complaint for Injunctive and Other Equitable Relief ("Complaint") and the Commission and defendants Tenneco Inc. ("Tenneco"), Channel Industries Gas Company ("Channel") and Tenneco Oil Company ("Tenneco Oil") having admitted to the jurisdiction of the Court over the parties and subject matter of this action solely for the purposes of the entry, enforcement and modification of this Judgment and having waived the entry of findings of fact and conclusions of law other than as set forth in this Judgment, and upon consideration of the provisions of the Stipulation and Consent Agreement ("Agreement") which is annexed hereto and incorporated herein:

I.

It is hereby ordered, adjudged, and decreed that Tenneco, its officers, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, are hereby permanently restrained and enjoined from violating, causing the violation of or aiding and abetting the violation of the Natural Gas Act ("NGA"), 15 U.S.C. 717, *et seq.*, and the regulations promulgated by the Commission thereunder ("NGA regulations"), by failing to file with the Commission any contract or agreement for the transportation by Tenneco of natural gas in interstate commerce for the benefit of any of Tenneco's subsidiaries or affiliates if required to be filed by Section 4(c) of the NGA and the provisions of § 154.1 of the NGA regulations, 18 CFR 154.1, as amended or affected by the Natural Gas Policy Act ("NGPA"), 15 U.S.C. 3301, *et seq.*, the regulations promulgated by the Commission thereunder ("NGPA regulations"), or any other legislation or regulations.

II.

It is further ordered, adjudged and decreed that Tenneco, its officers, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, are hereby permanently restrained and enjoined from violating, causing the violation of or aiding and abetting the violation of the NGA and the NGA regulations by transporting natural gas in interstate commerce for the benefit of any of Tenneco's subsidiaries or affiliates without having first obtained a certificate of public convenience and necessity if required with respect to such transportation by Section 7(c)(1)(A) of the NGA and the provisions of § 157.5 of the NGA regulations, 18 CFR 157.5, as amended or affected by the NGPA, the NGPA regulations, or any other legislation or regulations.

III.

It is further ordered, adjudged and decreed that Tenneco and Channel, and each of them, and their respective officers, employees, agents, servants, representatives, successors, affiliates, subsidiaries and assigns, and each of them, are hereby permanently restrained and enjoined from violating, causing the violation of or aiding and abetting the violation of the NGA and the NGA regulations by transporting to any of Tenneco's subsidiaries any natural gas purchased by Tenneco for, and committed or dedicated to, interstate commerce without any prior Commission authorization if required by Section 7(b) of the NGA and the provisions of §§ 157.5 and 157.30 of the NGA regulations, 18 CFR 157.5 and 157.30, as amended or affected by the NGPA, the NGPA regulations, or any other legislation or regulations.

IV.

It is further ordered, adjudged, and decreed that the Agreement be, and the same hereby is, incorporated herein with the same force and effect as if fully set forth herein.

V.

It is further ordered, adjudged, and decreed that, solely for the purposes of (a) effectuating the full and final settlement of all of the claims set forth in the Commission's Complaint and the matters and proceedings described in the Agreement, and (b) avoiding the termination of a source of supply of natural gas to the intrastate customers of Channel, it has been found by the Commission, and is hereby found and concluded by this Court that all interests of Atlantic Richfield Company, Mobil Producing Texas & New Mexico, Inc., Exxeter Petroleum Company, Tenneco Oil Company and Peninsula Resources Company, and the interests of their respective predecessors, successors, assigns, and reversioners, if any, in the fields and units described below, from which natural gas is being sold or is contracted to be sold to Channel on the effective date of the Agreement, are not, from

the effective date of the Agreement forward, deemed to be dedicated to interstate commerce within the meaning of the NGA or committed or dedicated to interstate commerce within the meaning of the NGPA, and that Tenneco, through Channel, is authorized to continue to pay to the producers of such gas the maximum lawful price under Section 105 or 106 of the NGPA, or any other maximum lawful price under the NGPA applicable to gas not committed or dedicated to interstate commerce:

(a) All zones below what is known as "Zone 20–C4" within the areal limits of the Seeligson Unit, Jim Wells County, Texas;

(b) The Riverside Field, Nueces County, Texas; and

(c) The Brayton Field, Nueces County, Texas.

Nothing in this provision shall affect in any way whatsoever any liabilities or obligations of any person or entity, other than Tenneco, Channel or Tenneco Oil and their subsidiaries, affiliates and divisions, and their respective officers, directors, employees, agents, servants, representatives, successors, or assigns, arising out of or in connection with any sales of natural gas prior to the effective date of the Agreement to an intrastate purchaser from the fields and units, or portions thereof described in Section V (a) through (c) above.

VI.

It is further ordered, adjudged and decreed that any relief not granted by this Judgment is expressly denied the Commission, and that except as provided in this Judgment, any and all claims, rights, obligations or causes of action, known or unknown, asserted or not asserted, without limitation, arising out of, related to, or in connection with each of the matters and transactions set forth in the Commission's Complaint or otherwise within the scope of Paragraph (2) of Article VI of the Agreement are hereby dismissed with prejudice to their ever being filed or refiled against Tenneco, Channel or Tenneco Oil, or their affiliates, divisions, subsidiaries and their respective officers, directors, employees, agents, servants, representatives, successors, or assigns, past, present or future.

VII.

It is further ordered, adjudged and decreed that all costs of Court are taxed against the party incurring the same.

VIII.

It is further ordered, adjudged and decreed that this Court shall retain jurisdiction of this matter for the purposes of enforcing and modifying this Judgment.

U.S. District Judge ———————

Dated: ———, 1982, Washington, D.C.

[FR Doc. 82-27975 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN79-3-000]

Tenneco Inc., et al.; Order

Issued: October 5, 1982.

On January 29, 1979, the Federal Energy Regulatory Commission ("Commission") instituted the investigation in the above-referenced docket. The purpose of the investigation was to determine, *inter alia*, whether certain sales of natural gas to Channel Industries Gas Company ("Channel") may have violated the Natural Gas Act ("NGA") or the Natural Gas Policy Act of 1978 ("NGPA"). Atlantic Richfield Company ("ARCO") was one of a number of independent producers of natural gas investigated in Docket No. IN79–3.

Representatives of the Commission Staff ("Staff") and ARCO have engaged in settlement discussions in order to reach an equitable resolution of this investigation as it regards ARCO and its predecessors in interest. As a result of those discussions, the Staff and ARCO have executed the attached Stipulation and Consent Agreement, which is intended to effect a complete settlement of the investigation with regard to ARCO and its predecessors in interest. The Commission believes that the Stipulation and Consent Agreement provides for an equitable resolution of this matter and is in the public interest.

The Commission Orders

(A) The Commission hereby approves in its entirety and without modification the Stipulation and Consent Agreement (including the appendices to that agreement) that is attached to this order and was executed by the Commission Staff and ARCO on September 29, 1982.

(B) ARCO shall, at its option,

(1) Within sixty (60) days after this order becomes final without modification and is no longer subject to judicial review, execute and deliver a corporate undertaking, in the form of the undertaking attached to the Stipulation and Consent Agreement that is approved by this order, evidencing its obligation to pay Six Million, Five Hundred Thousand Dollars ($6,500,000), plus interest accruing from the date of this order, soley for the purpose of making resitution to interstate customers of Tennessee Gas Pipeline Company. The undertaking will provide for ARCO to disburse the aggregate principal amount thereof, together with interest accruing from the date of this order to the date of disbursement in accordance with the provisions of § 154.102 of the Commission's regulations, 18 CFR § 154.102, to such of Tennessee's interstate customers in such amounts and in such manner as the Commission by further order shall direct; or

(2) Pay to an escrow agent Six Million, Five Hundred Thousand Dollars ($6,500,000), plus interest accruing in accordance with 18 CFR 154.102 from a date sixty (60) days after the date of this order until the date of deposit with an escrow agent, who will administer the funds in accordance with the instructions set forth in the Escrow Agreement which is attached to the Stipulation and Consent Agreement that is approved by this order.

(C) In addition to the obligation set forth in paragraph (B), ARCO shall, within sixty (60) days after this order becomes final without modification and is no longer subject to judicial review, pay Two Hundred Fifty Thousand Dollars ($250,000) to the Treasury of the United States of America in compromise and settlement of any and all civil penalties which may have been asserted with regard to ARCO or its predecessors in interest in connection with Docket Nos. CI77–298, IN79–3 (and related rate schedules) pursuant to the NGPA;

(D) ARCO shall not make sales of natural gas in intrastate commerce from ARCO's interests in the natural gas production committed or dedicated to interstate commerce under the certificates of public covenience and necessity described below, unless and until ARCO seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the Natural Gas Act and § 157.30 of the Commission's issued regulations thereunder.

(1) That certificate of public convenience and necessity issued by the Federal Power Commission to Sinclair Oil & Gas Company on December 22, 1954 in Docket No. G–2922 authorizing sales by Sinclair to Tennessee Gas Transmission Company of natural gas produced from the Seeligson Field, Jim Wells County, Texas;

(2) That certificate of public convenience and necessity issued by the Federal Power Commission to Sinclair Oil & Gas Company on December 22, 1954 in Docket No. G–2921 authorizing sales by Sinclair to Tennessee Gas Transmission Company of natural gas produced from the Edinburg Field, Hidalgo County, Texas.

(E) ARCO shall not make sales of natural gas in intrastate commerce from acreage in the Southwest Pheasant Field from which deliveries had been made to Tennessee pursuant to the December 21, 1959 contract unless and until ARCO seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and Section 157.30 of the Commission's issued regulations thereunder or makes any necessary filing or submission in accordance with Section 2(18)(B)(iii) of the NGPA.

(F) ARCO shall not make sales of natural gas to any party or entity pursuant to the surplus gas clauses

contained in the contracts identified below, and for a period of ten years from the date of issuance of this order, ARCO shall not make sales of natural gas to any party or entity pursuant to any surplus gas clause contained in any gas purchase and sale contract certificated under the NGA that is identical or similar to the clauses identified below, unless and until ARCO seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's regulations issued thereunder:

(1) Clause 2(f) of the contract dated May 25, 1948 among Tennessee Gas Transmission Company, Sinclair Prairie Oil Company, and others, which contract encompassed Sinclair's interest in the Seeligson Field, Jim Wells County, Texas;

(2) Clause 5(h) of the contract dated March 1, 1958 between Tennessee Gas Transmission Company and Sinclair Oil & Gas Company, which contract encompassed ARCO's interest in the Seeligson Unit, Jim Wells County, Texas;

(3) Clauses 6 (e) and (f) of the contract dated April 1, 1952 between Tennessee Gas Transmission Company and Sinclair Oil & Gas Company, which contract encompassed Sinclair's interest in the Edinburg Field, Hidalgo County, Texas.

(G) The Commission hereby orders that all of ARCO's interests in all zones below what is known as "Zone 20–C4", as described in the contract referred to in Paragraph (F)(2), *supra*, in the Seeligon Field, Jim Wells County, Texas, were not dedicated and are not deemed to have been or to be dedicated to interstate commerce within the meaning of the NGA or committed or dedicated to interstate commerce within the meaning of the NGPA.

(H) The Commission hereby terminates with prejudice as to ARCO and its predecessors (including Sinclair) (1) all proceedings in Commission Docket Nos. CI77–298 and IN79–3, and (2) all pending and potential matters in Docket Nos. G–2921 and G–2922 (and the corresponding rate schedules) only insofar as they relate to the issues raised in Docket Nos. CI77–298 and IN79–3 or in the attached Stipulation and Consent Agreement.

(I) The Commission hereby orders that any and all administrative or judicial claims, demands, liabilities, rights, obligations or causes of action, known or unknown, asserted or not asserted, without limitation, arising out of, related to, or connected with the matters under investigation in Docket Nos. CI77–298 or IN79–3; the pending and potential matters in Docket Nos. G–2921 and G–2922 (and the corresponding rate schedules) which relate to the issues raised in Docket Nos. CI77–298 or IN79–3; or the matters referred to in the attached Stipulation and Consent Agreement are released as to ARCO and its predecessors (including Sinclair), successors, officers, directors, employees, agents, servants, representatives, assigns, affiliates and subsidiaries.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Stipulation and Consent Agreement

In the Matter of Tenneco Inc. *et al.*

The Federal Energy Regulatory Commission Staff ("Staff") and Atlantic Richfield Company ("ARCO") stipulate and agree to the following:

I.

On February 28, 1977, Tenneco Inc. ("Tenneco") petitioned the Federal Power Commission, the predecessor to the Federal Energy Regulatory Commission (collectively "Commission"), for a declaratory order (Docket No. CI77–298) resolving alleged uncertainties as to whether all necessary filings had been made and all necessary regulatory authority obtained in connection with certain sales of natural gas by various producers to an intrastate pipeline, Channel Industries Gas Company ("Channel"), a wholly-owned subsidiary of Tenneco Corp. (which in turn is a 98% owned subsidiary of Tenneco), from fields in which sales were being made to Tennessee Gas Pipeline Co. ("Tennessee"), a division of Tenneco, or its predecessors. Tenneco supplemented its petition for declaratory order by filings dated March 18, 1977 and July 1, 1977.

Tenneco's petition raised alleged uncertainties regarding three fields in which ARCO has an interest: (1) The Seeligson Field, located in Jim Wells County, Texas; (2) the Edinburg Field in Hidalgo County, Texas; and (3) the Southwest Pheasant Field in Matagorda County, Texas. ARCO obtained its interests in these fields by merger in 1969 with Sinclair Oil Corporation, which was the successor of Sinclair Oil & Gas Company and Sinclair Prairie Oil Company (collectively "Sinclair") and which with respect to certain interests in the Seeligson Field also was the successor in interest to Texas Gulf Producing Company.

In the course of the proceeding in Docket No. CI77–298, it came to the Commission's attention that the transactions under investigation may involve potential violations of the Natural Gas Act ("NGA") and the Natural Gas Policy Act of 1978 ("NGPA"). Because of the nature of the potential violations, the Commission decided that its Staff should investigate the acts and transactions pursuant to the Commission's Rules Relating to Investigations, 18 CFR Part 1b. Thereafter, the Commission suspended Docket No. CI77–298 by order issued January 29, 1979, and initiated Docket No. IN79–3, also by order issued January 29, 1979. The Commission subsequently terminated the proceeding in Docket No. CI77–298 by order issued December 10, 1980. (Petition for review pending: *Tenneco Inc. v. FERC* (5th Cir. No. 81–4049)).

In the course of the private investigation conducted in Docket No. IN79–3, the Staff examined the record, including the testimony and exhibits, in Docket No. CI77–298, took additional testimony from representatives of, and subpoenaed documents from, a number of companies involved in the investigation, including ARCO. After reviewing the relevant information gathered in the course of its investigation in Docket No. IN79–3 and elicited in Docket No. CI77–298, the Staff met with representatives of ARCO to discuss settlement of this investigation as it relates to ARCO and its predecessors, including Sinclair. This Stipulation and Consent Agreement is the product of those settlement discussions.

II.

A. *Seeligson Field.* Two different types of transactions in the Seeligson Field are involved in this investigation. First, ARCO and other producers made sales to Channel of natural gas which the producers contend was "surplus" to Tennessee's needs, *i.e.*, gas produced from the Seeligson Unit which the producers contend was offered to and rejected by Tennessee and sold to Channel in accordance with "surplus gas" clauses contained in certain contracts between the producers and Tennessee which had been certificated by the Commission. Second, ARCO and other producers made sales to Channel from non-unitized deep zones underlying the Seeligson Unit.

1. *Sales to Tennessee from the Seeligson Unit.* On or about May 25, 1948, Sinclair and other natural gas producers entered into an agreement (the "1948 Contract") with Tennessee's predecessor, Tennessee Gas Transmission Company, for the purchase and sale of a quantity of natural gas from certain acreage in the Seeligson Field. The 1948 Contract contained a provision authorizing the sale of surplus residue gas to third parties, if the volumes first were tendered to and rejected by Tennessee.

Following the Supreme Court's decision in *Phillips Petroleum Corp.* v. *Wisconsin*, 347 U.S. 672 (1954), Sinclair filed an application for a certificate of public convenience and necessity authorizing its sale to Tennessee and submitted the 1984 Contract as its rate schedule. The Commission issued the requested certificate and accepted the 1948 Contract as the rate schedule under which the sale was to be made.

By agreement dated April 2, 1956, Sinclair and the other producers entered into a unit agreement which superseded a prior arrangement and unitized all oil and gas interests in the Seeligson Field down to the base of Zone 20–C4. By order issued November 19, 1957, the Texas Railroad Commission approved the unitization agreement, finding, among other things, that the agreement covered only that part of the field reasonably defined by development. In early 1958, each of the producers, including Sinclair, entered into separate replacement

contracts with Tennessee which canceled and superseded the 1948 Contract effective March 1, 1958, and had the effect of conforming the replacement contracts with the new Seeligson Unit. Among other things, the replacement contracts (a) committed gas from the dedicated acreage down to and including Zone 20–C4, (b) included additional acreage not subject to the 1948 Contract, and (c) reserved to the producers the right to sell to others surplus gas above the quantities required to be available to Tennessee.

Sinclair filed its replacement contract as a supplement to the existing rate schedule covering its sales under the 1948 Contract. By order effective April 25, 1959, the Commission accepted the replacement contract for filing, terminated the existing rate schedule, and established a new rate schedule for Sinclair's sales pursuant to the replacement contract. In addition, Sinclair petitioned the Commission to amend the certificate previously issued to it so as to authorize Sinclair to sell gas to Tennessee under the replacement contract. Similarly, Sun Oil Company ("Sun"), the operator of the Seeligson Unit, filed a petition to amend its certificate. Sun's petition was granted by order dated June 9, 1960. However, by order dated April 18, 1960, the Commission rejected Sinclair's petition to amend its certificate "for the reason that no further certificate authorization is required."

2. *Surplus Gas Sales to Channel.*—During January 1966, Tennessee advised the producers that it would be unable to take the contract quantity of 80,000 Mcf per day effective March 1, 1966, because of limited markets and limited line capacity following the sale of a segment of its Agua Dulce-Kinder line to Channel. Tennessee advised it would take only 54,000 to 60,000 Mcf of gas per day. The producers advised Tennessee that they would enforce the take-or-pay provisions of the replacement contracts, and in March 1966 the producers began to bill Tennessee for the difference between the actual takes and the take-or-pay quantity as provided by the replacement contracts. Consequently, at Tennessee's urging, the producers considered invoking the surplus gas provisions in the replacement contracts in order to sell surplus gas to Channel on a day-to-day basis.

Socony Mobil Oil Company, Inc. ("Mobil"), as Seller's Representative, notified Tennessee on March 31, 1966 that it was invoking the surplus gas provisions of the replacement contracts and that the unit owners intended to sell volumes of surplus gas pursuant to the provisions thereof. On April 7, 1966, Tennessee agreed that a surplus gas reserve existed and that the unit owners could sell such surplus gas reserves. On April 15, 1966, Mobil, on behalf of all interest owners in the Seeligson Unit, executed a contract with Channel for the sale of up to 25,000 Mcf per day of surplus gas. The price of the surplus gas sold under the contract with Channel was to be the same as the price paid by Tennessee under the replacement contracts. Deliveries to Tennessee from the unit continued, and in fact increased, after execution of the surplus gas agreement.

Neither Sinclair nor any of the other interest owners in the Seeligson Unit requested Commission authorization pursuant to Section 7 of the NGA and the Commission's regulations thereunder in connection with the surplus gas sale to Channel. The last deliveries under the surplus gas contract with Channel were made in 1973, and the contract was terminated effective October 8, 1976. From 1966 to 1973, ARCO (including sales by Sinclair) sold approximately 3.9 Bcf of surplus gas to Channel under the April 15, 1966 surplus gas contract. ARCO's sales to Tennessee from the Seeligson Unit are continuing.

3. *Deep Zone Sales to Channel.*—On May 4, 1965, Sinclair entered into an agreement with Channel for the sale of gas from specified deep zones (*i.e.*, zones below Zone 20–C4) underlying the Seeligson Unit. The initial price for the gas was 14 cents per Mcf, one-half cent less than the price then being paid to Sinclair under its 1958 replacement contract with Tennessee. Pursuant to the May 4, 1965 contract, as amended, the price paid by Channel subsequently increased and exceeded the price then being paid by Tennessee under Sinclair's 1958 replacement contract. At about the same time, three other producers also entered into purchase and sale contracts with Channel for the sale of gas from deep zones underlying the Seeligson Unit.

Neither Sinclair nor any of the other three producers who made similar deep zone sales to Channel requested Commission authorization prusuant to Section 7 of the NGA and the Commission's regulations thereunder in connection with the May 4, 1965 contract. Sales to Channel under the May 4, 1965 contract, as amended, are continuing, and through July 1981, approximately 45.3 Bcf of gas has been sold by ARCO (including sales made by Sinclair) to Channel pursuant to the contract.

B. *Edinburg Field.*—On April 1, 1952, Sinclair entered into an agreement to sell natural gas to Tennessee from various leases in the Edinburg Field in Hidalgo County, Texas (the "1952 Contract"). Other producers entered into contracts which were identical in all material respects, and in each case, the contract quantity was determined by reference to the volume of recoverable gas originally in place. In addition, each contract authorized the sale to third parties of gas offered to Tennessee and determined by Tennessee to be in excess of its requirements.

Sales under these contracts were certificated by the Commission following the *Phillip* decision, and the contracts were filed with the Commission as rate schedules in accordance with the Commission's regulations. In 1963, the producers and Tennessee agreed that the committed reserves under the 1952 contracts were approximately 100 Bcf. The producers attempted to sell the reserves in excess of 100 Bcf to Tennessee, which declined to purchase those volumes. On September 1, 1966, Sinclair and others contracted to sell the reserves in excess of 100 Bcf to Channel. All sales to Channel were at a price less than or equal to the price under the Tennessee contract.

Neither Sinclair nor any of the other producers in question requested Commission authorization pursuant to Section 7 of the NGA and the Commission's regulations thereunder in connection with these surplus sales to Channel. The surplus sales to Channel continued through 1973 and ceased when the reserves committed to Channel were depleted. ARCO's total sales (including sales by Sinclair) of surplus gas to Channel from the Edinburg field were approximately 8.01 Bcf. Sales to Tennessee, which continued during the pendency of the Channel sales, are continuing under a replacement contract dated March 23, 1973.

c. *Southwest Pheasant Field.*—On December 21, 1959 Sinclair entered into an Industrial Gas Purchase and Sales Contract with Tennessee for the purchase and sale of gas from Sinclair's interests in the Southwest Pheasant Field in Matagorda County, Texas. That contract required Tennessee to use the purchased gas exclusively as fuel for its compressors and other facilities wholly within the state of Texas. However, gas sold pursuant to that contract was commingled in Tennessee's pipeline with other natural gas destined for transportation outside the state of Texas. Deliveries to Tennessee commended in or about July 1960. Sinclair did not seek a certificate of public convenience and necessity from the Commission in connection with those sales to Tennessee.

On October 23, 1961, the Commission issued a decision in *Lo-Vaca Gathering Co.*, 26 FPC 606 (1961), in which the Commission declared that if natural gas had been sold to an interstate pipeline to use wholly within the state of production and the gas had been commingled with natural gas destined for transportation for resale outside the state of production, then the transaction constituted a jurisdictional sale under the NGA. The Commission's decision ultimately was affirmed by the United States Supreme Court in *California* v. *Lo-Vaca Gathering Company*, 379 U.S. 366 (1965).

Subsequent to the Supreme Court's *Lo-Vaca* decision, Sinclair's sales to Tennessee were terminated, effective March 31, 1965, by mutual consent of the parties. Thereafter, Sinclair entered into a new contract, effective April 1, 1965, under which gas produced from the same Southwest Pheasant Field acreage was sold to Channel. Sinclair did not request Commission authorization pursuant to section 7 of the NGA and the Commission's regulations thereunder in connection with the sales to Channel. Deliveries to Channel continued through May 1979. Sinclair's total sales (including sales by ARCO) to Channel from the Southwest Pheasant Field were 11.66 Bcf, and from October 23, 1961 through March 31, 1965 Sinclair sold approximately 5.52 Bcf to Tennessee.

III

ARCO's position throughout these proceedings has been that its sales to Channel were lawful and proper in all respects. Conversely, except as specified in Part IV (11) below, it has been the Staff's position with regard to the circumstances described in Part II above, that all natural gas attributable to ARCO's interests in the Seeligson, Edinburg, and Southwest Pheasant Fields that ultimately was sold to Channel was dedicated to interstate commerce and that ARCO's and its predecessor's sales to Channel from those fields constituted an

abandonment of service to the interstate natural gas market and civil violations of Section 7(b) of the NGA and § 157.30 of the Commission's regulations thereunder. Furthermore, the Staff has contended that certain of those sales to Tennessee and Channel were made at prices in excess of those permitted by the NGA and the NGPA and that those sales constituted civil violations of the NGA and the NGPA.

ARCO admits the facts set forth in Part II above. However, for purposes of this agreement, ARCO neither admits nor denies that any of its or its predecessor's actions or omissions constitute a violation of the NGA, NGPA, or any regulation thereunder. Furthermore, if any of the facts admitted by ARCO are found to constitute violations, ARCO expressly denies that any such violations were willful and knowing violations of the NGA, NGPA, any other statute, or any regulation.

Solely to avoid the expense and burden of litigation, and in full settlement of any and all administrative and civil liabilities under the NGA or the NGPA, including the imposition of civil penalties and any other civil and administrative relief, which have or may have arisen from the transactions, acts or omissions that are the subject of the investigations in Docket Nos. CI77–298 or IN79–3 or of this Stipulation and Consent Agreement, the Staff and ARCO, without making any explicit or implicit admissions (except as expressly set forth in this Stipulation and Consent Agreement) and without receding from their legal positions, agree and stipulate as follows:

(1) Within sixty (60) days after a Commission order approving this Stipulation and Consent Agreement *in toto* becomes final without modification and is no longer subject to judicial review, ARCO will excecute and deliver a corporate undertaking, in the form of the undertaking attached as Appendix 1, evidencing its obligation to pay Six Million, Five Hundred Thousand Dollars ($6,500,000), plus interest accruing from the date of the Commission order approving this Stipulation and Consent Agreement *in toto*, solely for the purpose of making restitution to interstate customers of Tennessee Gas Pipeline Company. The undertaking will provide for ARCO to disburse the aggregate principal amount thereof, together with interest accrued from the date of the Commission order approving this Stipulation and Consent Agreement *in toto* to the date of disbursement in accordance with the provisions of § 154.102 of the Commission's Regulations, 18 CFR 154.102, to such of Tennessee's interstate customers and in such amounts and in such manner as the Commission by order shall direct. No part of any payments made by ARCO pursuant to this paragraph (1) or paragraph (2) shall constitute any form of fine, penalty or forfeiture or a compromise of any form of fine, penalty or forfeiture.

(2) Alternatively, in ARCO's sole and unqualified discretion, ARCO may satisfy completely its obligations under paragraph (1) by paying to an escrow agent Six Million, Five Hundred Thousand Dollars ($6,500,000), plus interest accruing in accordance with 18 CFR 154.102 from a date sixty (60) days after the date of the Commission order approving this Stipulation and Consent Agreement *in toto* until the date of deposit with the escrow agent, who will administer the funds pursuant to the provisions of the Escrow Agreement which is attached as Appendix 2. The payment of such funds to the escrow agent shall toll the running of all interest on such funds, and, notwithstanding the provisions of 18 CFR 154.102 or any other regulation or statute addressing the issue of interest, ARCO shall be liable for no interest on the funds delivered to the escrow agent. If the escrow agent returns the escrow funds to ARCO pursuant to paragraph 15 of the attached Escrow Agreement, interest shall accrue on such funds in accordance with 18 CFR 154.102 from the date of the return of such funds to the date of disbursement to such of Tennessee's interstate customers and in such amounts as the Commission by order shall direct. In the event of such return of funds, ARCO shall continue to comply with the provisions of this Stipulation and Consent Agreement.

(3) Within sixty (60) days after a Commission order approving this Stipulation and Consent Agreement *in toto* becomes final without modification and is no longer subject to judicial review, ARCO will pay Two Hundred and Fifty Thousand Dollars ($250,000) to the Treasury of the United States of America in compromise and settlement of any and all civil penalties, including those under the NGPA, which may have been asserted in connection with the matters that are the subject of Docket Nos. CI77–298 and IN79–3 or this Stipulation and Consent Agreement. Except to the limited extent provided in this paragraph (3), the Staff agrees that the imposition of any penalties or fines for any alleged statutory or regulatory violation that ARCO may have committed is not appropriate and such penalties or fines will not be sought from ARCO.

(4) ARCO hereafter will not make sales of natural gas in intrastate commerce from ARCO's interests in natural gas production committed or dedicated to interstate commerce under the certificates of public convenience and necessity described below, unless and until ARCO seeks and obtains from the Commission the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's regulations thereunder:

(a) That certificate of public convenience and necessity issued by the Federal Power Commission to Sinclair Oil & Gas Company on December 22, 1954 in Docket No. G–2922 authorizing sales by Sinclair to Tennessee Gas Transmission Company of natural gas produced from the Seeligson Field, Jim Wells County, Texas.

(b) That certificate of public convenience and necessity issued by the Federal Power Commission to Sinclair Oil & Gas Company on December 22, 1954 in Docket No. G–2921 authorizing sales by Sinclair to Tennessee Gas Transmission Company of natural gas produced from the Edinburg Field, Hidalgo County, Texas.

(5) ARCO shall not make sales of natural gas in intrastate commerce from acreage in the Southwest Pheasant Field from which deliveries had been made to Tennessee pursuant to the December 21, 1959 contract unless and until ARCO seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's issued regulations thereunder or makes any necessary filing or submission in accordance with Section 2(18)(B)(iii) of the NGPA. Furthermore, ARCO will use its best efforts to terminate the existing contract with Channel and to reach a contract for the sale to Tennessee of gas from the acreage in the Southwest Pheasant Field that currently is under contract to Channel. ARCO further agrees to seek the necessary certificate of public convenience and necessity in connection with that sale. For its part, the Staff agrees to urge that the Commission issue a certificate in connection with the sale that recognizes and accepts any reasonable excess royalty provision that ARCO may negotiate in a contract with Tennessee.

(6) ARCO hereafter will not make sales of natural gas to any person or entity pursuant to the surplus gas clauses contained in the contracts identified below, and, for a period of ten years from the date of issuance of an Order approving this Stipulation and Consent Agreement *in toto*, ARCO will not make sales of natural gas to any person or entity, pursuant to any surplus gas clause contained in any gas purchase and sale contract certificated under the NGA that is identical or similar to the clauses identified below unless and until ARCO seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's regulations thereunder:

(a) Clause 2(f) of the contract dated May 25, 1948 among Tennessee Gas Transmission Company, Sinclair Prairie Oil Company, and others, which contract encompassed Sinclair's interest in the Seeligson Field, Jim Wells County, Texas;

(b) Clause 5(h) of the contract dated March 1, 1958 between Tennessee Gas Transmission Company and Sinclair Oil & Gas Company, which contract now encompasses ARCO's interest in the Seeligson Unit, Jim Wells County, Texas;

(c) Clauses 6(e) and (f) of the contract dated April 1, 1952 between Tennessee Gas Transmission Company and Sinclair Oil & Gas Company, which contract encompassed Sinclair's interest in the Edinburg Field, Hidalgo County, Texas.

IV

(1) Except as expressly stipulated, acknowledged and agreed herein, neither the Staff nor ARCO makes or has made any admissions, acknowledgements or agreements in connection herewith.

(2) The Staff and ARCO agree that, upon the issuance of a Commission order approving this Stipulation and Consent Agreement, this Stipulation and Consent Agreement shall resolve as to ARCO and its predecessors (including Sinclair) and its officers, directors, employees, agents, servants, and representatives, both past and present, any and all administrative and civil matters, demands, liabilities, or claims set forth or referred to in this Stipulation and Consent Agreement or that were the subject

of investigation in Docket Nos. CI77–298 or IN79–3. Moreover, any and all administrative or judicial claims, demands, liabilities, rights, obligations, or causes of action, known or unknown, asserted or not asserted, without limitation, arising out of, related to, or connected with the matters under investigation in Docket Nos. CI77–298 or IN79–3; the pending and potential matters in Docket Nos. G–2921 and G–2922 (and the corresponding rate schedules) which relate to the issues raised in Docket Nos. CI77–298 or IN79–3; or the matters referred to in this Stipulation and Consent Agreement are released by the Commission as to ARCO and its predecessors (including Sinclair), and the Commission is forever barred from filing or refiling them against ARCO, its officers, employees, agents, servants, directors, representatives, predecessors, successors, assigns, affiliates and subsidiaries. Subject to the provisions of Paragraph (12) below, this Stipulation and Consent Agreement shall in no way restrict or infringe upon the Commission's right to provide documents or information obtained in the course of its investigations involving ARCO to other governmental departments or agencies.

(3) As part of the Commission's order approving this Stipulation and Consent Agreement *in toto*, the Commission shall terminate with prejudice as to ARCO (a) all proceedings in Commission Docket Nos. CI77–298 and IN79–3 and (b) all pending and potential matters in Docket Nos. G–2921 and G–2922 (and the corresponding rate schedules) only insofar as they relate to the issues raised in Docket Nos. CI77–298 and IN79–3 or in this Stipulation and Consent Agreement.

(4) ARCO waives notice of assessment and assessment by order pursuant to the NGPA in connection with the payment of the civil penalties provided for herein.

(5) The Staff and ARCO state that they enter into this Stipulation and Consent Agreement voluntarily and that other than the agreements provided herein, no tender, offer, promise, or threat of any kind whatsoever has been made by either of them, or any member, officer, agent or representative thereof, to induce the other to enter into this Stipulation and Consent Agreement.

(6) This Stipulation and Consent Agreement represents a negotiated settlement in the public interest for the purpose of settling as to ARCO and its predecessors (including Sinclair) all administrative and civil liability in connection with the matters referred to above in Paragraphs (2) and (3) of this Secton IV.

(7) By this Stipulation and Consent Agreement, the Staff evidences its intention to settle entirely only the matters referred to herein within the Commission's jurisdiction and within the Commission's authority to settle.

(8) With the exception of ARCO's right to put funds in escrow at its option, the provisions of Section III of this Stipulation and Consent Agreement shall not become operative until all Commission orders contemplated by this Stipulation and Consent Agreement are final and no longer subject to judicial review. Moreover, the provisions of Section III shall not become operative if any of the Commission orders contemplated by this Stipulation and Consent Agreement are reversed, vacated, or modified by any court or tribunal.

(9) The parties agree to be bound by the provisions of this Stipulation and Consent Agreement as of the date when a Commission order approving the Stipulation and Consent Agreement *in toto* becomes final without modification and is no longer subject to judicial review. Except as provided in Paragraph (10) below, the parties to this Stipulation and Consent Agreement expressly waive and voluntarily relinquish their rights to appeal from or seek any further review of any Commission order approving this Stipulation and Consent Agreement *in toto*.

(10) Should the Commission reject this Stipulation and Consent Agreement or issue an order approving this Stipulation and Consent Agreement in part but not in whole, or should the Commission incorporate in its approval of this Stipulation and Consent Agreement any restriction, qualification or condition not provided for herein, and should the effect of such partial, restricted, qualified or conditional approval be of such a nature as to lessen the benefits or rights or increase the burdens or obligations of ARCO, as determined in its sole and unqualified discretion, then ARCO shall have the right to accept such partial, restricted, qualified or conditional approval, or to reject such partial, restricted, qualified or conditional approval by written notice to the Commission within thirty (30) days after issuance of such order. Should a court reject this Stipulation and Consent Agreement or issue an order approving this Stipulation and Consent Agreement in part but not in whole, or should a court incorporate in its approval of this Stipulation and Consent Agreement any restriction, qualification or condition not provided for herein, and should the effect of such partial, restricted, qualified or conditional approval be of such a nature as to lessen the benefits or rights or increase the burdens or obligations of either the Commission or ARCO, as determined by each in its sole and unqualified discretion, then the Commission and ARCO shall each have the right to accept such partial, restricted, qualified or conditional approval, or to reject such partial, restricted, qualified or conditional approval by written notice to the other party or to the court within thirty (30) days after the issuance of such order. Upon rejection pursuant to this paragraph by either party, this Stipulation and Consent Agreement shall be null and void, and of no effect whatsoever. ARCO also reserves the right to seek rehearing or judicial review of any modifications or conditions which the Commission or a court may impose on the approval of this agreement.

(11) In view of the full and final settlement set forth in this Stipulation and Consent Agreement and for the purpose of effectuating an equitable resolution and final termination of the matters in the above-described investigations as they relate to ARCO, it is recognized and agreed by the Staff and ARCO that all of ARCO's interests in all zones below what is known as "Zone 20–C4", as described in the contract referred to in Part III(6)(b) of this Stipulation and Consent Agreement, in the Seeligson Field, Jim Wells County, Texas, were not dedicated and are not deemed to have been or to be dedicated to interstate commerce within the meaning of the NGA or committed or dedicated to interstate commerce within the meaning of the NGPA.

(12) ARCO agrees that, when the Commission orders specified in Paragraph (3) above become final without modification and are no longer subject to judicial review, ARCO shall provide copies of all non-privileged and non-proprietary documents and other written materials which may be requested by the Commission relating to issues raised in Commission Docket Nos. CI77–298 or IN79–3; provided, however, that in so agreeing, neither ARCO nor any of its officers, directors, employees, agents, servants or representatives, both past and present, shall be deemed to have waived or relinquished any rights, privileges, or other protections established by law to which it or they otherwise may be entitled. The Commission shall reimburse ARCO for the reasonable copying costs associated with such requests. ARCO further agrees that the provisions of this paragraph shall in no way limit or prejudice the Commission's rights to obtain such documents and information through subpoena, negotiation, or other means provided by law. Except for those documents that the Commission is required by law to maintain, it is further provided that all documents provided to the Commission by ARCO, and any copies of such documents made by the Commission, shall remain the property of ARCO, shall not be agency records, and upon the conclusion of the investigation in Docket No. IN79–3, all originals and copies of such documents shall be returned promptly to ARCO. The Staff further agrees that, should any person, party, association, governmental body or authority make a request under any applicable statute or regulation or otherwise to the Commission to inspect, review, or obtain copies of any documents provided by ARCO pursuant to this paragraph, the Commission shall forthwith inform ARCO of such request, shall provide ARCO an opportunity to respond to the request, and shall not release for inspection, review, or copying any such documents until ten working days after having notified ARCO of such request.

(13) Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts the agreement on that party's behalf.

Agreed to and accepted this 29th day of September, 1982.

Federal Energy Regulatory Commission Staff.

Marilyn L. Doria,

Assistant General Counsel, Office of General Counsel, Enforcement Division.

Atlantic Richfield Company.

S. C. Mut,

Vice President.

APPENDIX 1

Agreement and Corporate Undertaking of Atlantic Richfield Company

In the Matter of Tenneco Inc., *et al.*

Atlantic Richfield Company ("ARCO") hereby agrees and undertakes to pay Six Million, Five Hundred Thousand Dollars ($6,500,000) plus interest accruing from ——— , 1982, the date of the relevant Commission order in this docket, to the date of disbursement, calculated in accordance with the provisions of 18 CFR 154.102 solely for the purpose of making restitution to such interstate customers of Tennessee Gas Pipeline Company in such amounts and in such manner as the Commission by further order shall direct. ARCO has caused this agreement and corporate undertaking to be executed and sealed in its name by its officer thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this —— day of ———, 1982.

Atlantic Richfiled Company.

Title ———————————

Attest:

Assistant Secretary———————————

Certificate

I, M. Pat Lemons, Assistant Secretary of Atlantic Richfield Company, a Pennsylvania corporation, do hereby certify that at a meeting of the board of directors of said Atlantic Richfield Company held at the office of the company in Beverly Hills; California, on the 4th day of May, 1982, a quorum being present, the following resolution was presented and unanimously adopted:

Resolved, that the Chairman of the Board, any Vice Chairman of the Board, the President, any Vice President and the Treasurer of the Company be and each of them hereby is severally authorized and empowered in the name and on behalf of the Company to make, execute, authenticate, acknowledge and deliver any contract, agreement, release, assignment, lease, conveyance, deed, transfer of real or personal property, tax return, tax election, proxy, power of attorney with full and general or limited authority, with power of substitution, or any other instrument similar or dissimilar to the preceding, which he may deem necessary or proper in connection with the business of the Company, without further act or resolution of this Board, and the Secretary or any Assistant Secretary be and each of them hereby is severally authorized and empowered to affix the corporate seal to any such papers or documents and to attest the same in cases where such action is necessary or appropriate.

I further certify that the foregoing resolution is still in full force and effect and has not been amended or rescinded.

I further certify that each of J. A. Middleton, O. G. Simpson and Stuart C. Mut is a duly elected, qualified, and acting Vice President, and each of Mary C. Drayer, M. Pat Lemons and Charlotte Lloyd is a duly authorized Assistant Secretary of Atlantic Richfield Company, and have been such at all times since the adoption of said resolution.

Witness my hand and seal of this Company this —— day of ———, 1982.

M. Pat Lemons,

Assistant Secretary, Atlantic Richfield Company.

Appendix 2

Escrow Agreement

This agreement is made and entered into this ——— day of ———, 1982 by and between ATLANTIC RICHFIELD COMPANY (hereinafter called "ARCO"), a Pennsylvania corporation, and REPUBLICAN BANK, DALLAS, N.A. (hereinafter called "Escrow Agent" or "Bank"), a national bank with trust powers located in Dallas, Texas.

Witnesseth:

Whereas, on January 29, 1979 the Federal Energy Regulatory Commission (hereinafter called "Commission") instituted an investigation to determine, among other things, whether certain sales of natural gas to Channel Industries Gas Company may have violated the Natural Gas Act or the Natural Gas Policy Act of 1978;

Whereas, by Stipulation and Consent Agreement dated September —, 1982 the Commission Staff and ARCO agreed to a complete settlement of the investigation as to ARCO which required ARCO either to execute and deliver a corporate undertaking evidencing its obligation to pay $6,500,000 plus interest or to pay $6,500,000 into an escrow account for the sole purpose of making restitution to interstate customers of Tennessee Gas Pipeline Company (hereinafter called "Tennessee") to be disbursed in such amounts and in such manner as the Commission by further order shall direct;

Whereas, the Commission issued an Order dated ———, 1982 approving the Stipulation and Consent Agreement *in toto;* and

Whereas, ARCO has elected to satisfy its obligations thereunder by paying the settlement amount of $6,500,000 plus applicable interest, if any, into an escrow account,

Now, therefore, in consideration of the foregoing and of the mutual covenants hereinafter set forth, it is mutually agreed as follows:

1. ARCO hereby designates and appoints the Bank as Escrow Agent to receive, hold, invest, and distribute the monies paid into escrow in accordance with the terms and provisions set forth herein.

2. Within ten (10) banking days from the date of execution of this Escrow Agreement, ARCO will transfer and deliver to the Escrow Agent the settlement amount of $6,500,000, plus applicable interest, if any, provided for in the Commission's Order of ———, 1982 (hereinafter called "Initial Escrow Fund"). The Escrow Agent will acknowledge receipt of the Initial Escrow Fund to ARCO and the Commission in writing.

3. The Escrow Agent shall invest the Initial Escrow Fund, at ARCO's direction (as indicated by ARCO in writing to the Escrow Agent), in any one or more of the following:

(a) Savings deposits with the Bank, to be held in the name of the Bank as Escrow Agent, bearing interest at the highest rate then being paid by the Bank on savings deposits of similar nature and size from the date of deposit to the date of withdrawal;

(b) Time certificate(s) of deposit issued by the bank, which have maturities of one year or less from the date of issuance, to be held in the name of the Bank as Escrow Agent, in denominations and for maturities directed by ARCO, which certificate(s) of deposit shall bear interest at the highest rate being quoted by the Bank on the date of issuance thereof for certificates of deposit of substantially the same denomination and maturity;

(c) Direct obligations of the United States in the form of Treasury Bills or other evidences of indebtedness or obligations fully guaranteed, both as to principal and interest, by the United States of America which have maturities of one year or less from the date of purchase; provided, the Escrow Agent shall have no liability for any loss due to fluctuations in the market price of Treasury Bills or other debt obligations referred to in this subparagraph (c).

(d) Commercial paper with a maturity of not later than ninety (90) days from date of issuance; or

(e) Banker's acceptances with a maturity of not later than ninety (90) days from the date of purchase thereof by the Escrow Agent.

4. The Escrow Agent shall be liable only for such interest or income as it receives from the invested funds described in paragraph 3 above less the fees or expenses described in paragraph 5, and no other interest or income may be collected from it.

5. For its services under this Escrow Agreement, the Escrow Agent shall be entitled to compensation in an amount equal to an annual fee of 1/10 of 1% of the value of the Escrow Funds held, and in no event shall the annual fee be less than $1,000. In addition, the Escrow Agent shall be entitled to a fee of $25 for each individual disbursement in excess of ten.

6. The Escrow Agent shall accumulate and reinvest (pursuant to the provisions of paragraph 3) the income from the investments set forth in paragraph 3 above (such income and investments hereinafter collectively called the "Escrow Funds") and, subject to the other provisions of this agreement, shall disburse the Escrow Funds to such of the interstate customers of Tennessee in such amounts and in such manner as the Commission by future order shall direct. Upon receipt from the Commission or its delegate of a written direction of the Commission stating that the order or orders contemplated by this paragraph are final and no longer subject to further administrative recourse or judicial review, the Escrow Agent shall make the disbursements to the interstate customers of Tennessee as set forth in such order or orders.

7. Except with the express written consent of ARCO, no part of the Escrow Funds shall be disbursed prior to the time when ARCO and the Commission notify the Escrow Agent in writing that the Commission's Order of

———, 1982 in Docket No. IN79–3 has become final without modification and is no longer subject to judicial review.

8. If the Commission's Order of ———, 1982 in Docket IN79–3 is reversed, vacated, or modified in any manner by any court or tribunal, then the Escrow Agent, upon written request from ARCO, shall pay immediately the Escrow Funds to ARCO or to any person or entity designated by ARCO.

9. Commencing ———, 1982, the Escrow Agent shall provide ARCO and the Commission with monthly reports setting forth the amount of the Escrow Funds, a description of the makeup of the Escrow Funds, and the expense charge for administering the account. Such monthly report shall be mailed to ARCO and the Commission on or before the last business day of each month and shall reflect the activities and the status of the account in the immediately preceding month. On or before the end of the month next following the month in which any partial disbursement is made pursuant to paragraph 7 above, the Escrow Agent shall provide ARCO and the Commission with a report describing the disbursement. On or before the end of the month next following the month in which the disbursement is made of all of, or the remainder of, the Escrow Funds pursuant to paragraph 7 above, the Escrow Agent shall provide ARCO and the Commission with a report chronicling the history of the Escrow Funds including all expenses charged for the Escrow Agent's services.

10. The Escrow Agent undertakes to perform only such duties as are expressly set forth herein.

11. (a) The Escrow Agent shall hold the Escrow Funds in its safekeeping and deliver the same, or any part or parcel thereof only in accordance with the terms of this Agreement or in accordance with written instructions consistent with this agreement.

(b) When instructions from both ARCO and the Commission are required, such instructions may be given by separate instruments or similar tenor. Either may hereafter act through an agent or attorney-in-fact only if written evidence of authority in form and substance satisfactory to the Escrow Agent is furnished to the Escrow Agent.

(c) The Escrow Agent may act upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other document which it in good faith believes to be genuine.

(d) The Escrow Agent shall be deemed to have properly delivered any item of the Escrow Funds upon (i) placing the item in the United States Mail in a suitable package or envelope with first class prepaid postage affixed, addressed to the addressee at such addressee's address as set forth in this Agreement or such other address as the addressee shall have furnished to the Escrow Agent in writing; (ii) delivery in person at the Escrow Agent's offices; or (iii) delivery in any other manner pursuant to written instructions as herein provided.

12. (a) The Escrow Agent shall not be responsible or liable to any person in any manner whatever for the sufficiency, correctness, genuineness, effectiveness or validity of any of the Escrow Funds, or for the form or execution thereof, or for the identity or authority of any person executing or depositing the same. The Escrow Agent is authorized to rely upon all representations, both actual and implied, of ARCO, including without limitation representations as to authority to execute and deliver this Agreement, notifications, receipts or instructions hereunder, and relationships among persons, including persons authorized to receive delivery hereunder, and the Escrow Agent shall not be liable to any person in any manner by reason of such reliance. The duty of the Escrow Agent hereunder shall be only to ARCO and its successors or designate.

(b) The Escrow Agent shall not be liable to any person for anything which it in good faith and reasonably may do or refrain from doing in connection with this Agreement, unless it is guilty of gross negligence or willful misconduct.

13. This Agreement is a personal one between the parties hereto and no assignment or attempted assignment of this Agreement or any interest hereunder by any party hereto shall be of any force or effect unless such assignment is expressly made subject to this Agreement, the assignee shall give its written consent to be bound to the terms of this written agreement as to assignee's share in any of the proceeds deposited hereunder, and the assignment is approved by both parties and the Commission.

14. No person, firm, corporation or other entity will be recognized by the Escrow Agent as a successor or personal representative of any party hereto until there shall be presented to the Escrow Agency evidence satisfactory to it of such succession.

15. At such time as all the terms and conditions of this agreement have been performed, including the final report required by paragraph 9 above, this Escrow Agreement shall terminate; provided, however, that if this Escrow Agreement is not terminated on or before December 31, 1985, or by such later date as ARCO and the Escrow Agent shall have agreed to in writing, the Escrow Agent shall upon ninety (90) days advance notice from ARCO disburse the Escrow Funds, then remaining with the Escrow Agent, by bank cashier's check drawn to ARCO and in such event shall notify both ARCO and the Commission of such action and prepare the final report required by paragraph 9 whereupon all of the Escrow Agent's liabilities and obligations under or in connection with this Escrow Agreement shall terminate.

16. The Escrow Agent is not a party to, nor is it bound by nor need it give consideration to the terms or provisions of any other agreement or undertaking, any agreement or undertaking which may be evidenced by or disclosed by the Escrow Funds, it being the intention of the parties that the Escrow Agent assent to and be obligated to give consideration to only the terms and provisions of this Agreement. Unless otherwise provided, the Escrow Agent shall have no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of any of the Undersigned with respect to arrangements or contracts with each other or with others, the Escrow Agent's sole duty hereunder is to safeguard the Escrow Funds and to dispose of and deliver the same in accordance with instructions given to it as provided in this Agreement.

17. Neither Tennessee nor Tennessee's customers nor any other person or entity shall be a third-party beneficiary to, or have any other right or interest in this Escrow Agreement.

18. (a) If the Escrow Agent is required by the terms hereof to determine the occurrence of any event or contingency, the Escrow Agent shall, in making such determination, be liable only for its own willful misconduct or its gross negligence, as determined in light of all the circulstances, including the time and facilities available to it in the ordinary conduct of its business. In determining the occurrence of any such event or contingency the Escrow Agent may request from ARCO or any other person such reasonable additional evidence as the Escrow Agent in its sole discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and may at any time inquire of and consult with others, and the Escrow Agent shall not be liable for any damages resulting from its delay in acting hereunder pending its receipt and examination of additional evidence requested by it.

(b) Whenever the Escrow Agent is required by these terms to take action upon the occurrence of any event or contingency, the time prescribed for such action shall in all cases be a reasonable time after written notice to the Escrow Agent of the happening of such event or contingency, provided, however, that this provision shall not be deemed to limit or reduce the time allowed the Escrow Agent for action as provided in subparagraph (a) above.

19. Whenever under the terms hereof the time for performance of any provision shall fall on a date which is not a regular business day of the Escrow Agent, the performance thereof on the next succeeding regular business day of the Escrow Agent shall be deemed to be in full compliance. Whenever time is referred to in this Agreement, it shall be the time recognized by the Escrow Agent in the ordinary conduct of his normal business transactions.

20. (a) In the event of any disagreement or controversy hereunder, or if conflicting demands or notices are made upon the Escrow Agent, or in the event the Escrow Agent in good faith and reasonably is in doubt as to what action it should take hereunder, ARCO expressly agrees and consents that the Escrow Agent shall have the absolute right (i) to stop all further proceedings in, and performance of, this Agreement and of all instructions received hereunder, and (ii) to file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring all persons involved to interplead and litigate in such court their several claims and rights among themselves and with the Escrow Agent.

(b) While any suit or legal proceeding arising out of or relating to this Agreement is pending, whether the same be initiated by the Escrow Agent or by others, the Escrow Agent shall have the right at its option to stop all further proceedings in, and performance of, this Agreement and instructions received hereunder until all differences shall have been resolved by agreement or until the rights of all parties shall have been fully and finally adjudicated by the court. The rights of the Escrow Agent under this paragraph are in addition to all other rights which it may have by law or otherwise.

(c) The Escrow Agent may from time to time consult with legal counsel of its own choosing in the event of any disagreement, controversy, question or doubt as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel.

21. The Escrow Agent is authorized to withhold from any funds deposited hereunder, prior to distribution of said funds and prior to termination of this Agreement, its charges for services hereunder and additional amounts sufficient to reasonably compensate it for additional services imposed upon it as a result of additional responsibilities in connection with or arising on account of this Agreement or as a result of litigation or threatened litigation referred to in paragraph 20, and to reimburse it for reasonable attorneys' fees, disbursements, expenses, and costs incurred hereunder.

22. All notices and communications hereunder shall be in writing and shall be deemed to be duly given if sent by certified mail, return receipt requested as follows:

Republic Bank DALLAS, N.A., P.O. Box 241, Dallas, Texas 75221, Attention:———

Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221, Attention: David Aston.

or at such other address as any of the above may have furnished to the other parties in writing by certified mail, return receipt requested.

23. Any amendment or modification of this Agreement shall be effective when signed by the parties hereto and approved by order of the Commission or its authorized delegate.

24. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Texas.

In witness whereof, the parties hereto have executed this Escrow Agreement on this —— day of ———, 1982.

Atlantic Richfield Company.

[Title]———

Republic Bank Dallas, N.A.

[Title]———

[FR Doc. 82-27976 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. IN79-3-000]

Tenneco Inc., et al.; Order

Issued October 5, 1982.

On January 29, 1979, the Federal Energy Regulatory Commission ("Commission") instituted the investigation in the above-referenced docket. The purpose of the investigation was to determine, *inter alia*, whether certain sales of natural gas to Channel Industries Gas Company ("Channel") may have violated the Natural Gas Act ("NGA") or the Natural Gas Policy Act of 1978 ("NGPA"). Sun Exploration and Production Company ("Sun") was one of a number of independent producers of natural gas investigated in Docket No. IN79-3.

Representatives of the Commission Staff ("Staff") and Sun have engaged in settlement discussions in order to reach an equitable resolution of this investigation as it regards Sun and Sun's predecessors in interest. As a result of those discussions, the Staff and Sun have executed the attached Stipulation and Consent Agreement, which is intended to effect a complete settlement of the investigation with regard to Sun and its predecessors in interest. The Commission believes that the Stipulation and Consent Agreement provides for an equitable resolution of this matter and is in the public interest.

The Commission orders:

(A) The Commission hereby approves in its entirety and without modification the Stipulation and Consent Agreement (including the appendices to that agreement) that is attached to this order and was executed by the Commission Staff and Sun on September 29, 1982.

(B) Sun shall, at its option,

(1) Within sixty (60) days after this order becomes final without modification and is no longer subject to judicial review, execute and deliver a corporate undertaking, in the form of the undertaking attached to the Stipulation and Consent Agreement that is approved by this order, evidencing its obligation to pay ten million, five hundred thousand dollars ($10,500,000), plus interest accruing from the date of this order, solely for the purpose of making restitution to interstate customers of Tennessee Gas Pipeline Company. The undertaking will provide for Sun to disburse the aggregate principal amount thereof, together with interest accruing from the date of this order to the date of disbursement in accordance with the provisions of § 154.102 of the Commission's regulations, 18 CFR 154.102, to such of Tennessee's interstate customers in such amounts and in such manner as the Commission by further order shall direct;

or

(2) Pay to an escrow agent ten million, five hundred thousand dollars ($10,500,000), plus interest, if any, accruing in accordance with 18 CFR 154.102 from a date sixty (60) days after the date of this order until the date of deposit with the escrow agent, who will administer the funds in accordance with the instructions set forth in the Escrow Agreement which is attached to the Stipulation and Consent Agreement that is approved by this order.

(C) In addition to the obligation set forth in paragraph (B), Sun shall, within sixty (60) days after this order becomes final without modification and is no longer subject to judicial review, pay two hundred and fifty thousand dollars ($250,000) to the Treasury of the United States of America in compromise and settlement of any and all civil penalties which may have been asserted with regard to Sun or its predecessors in interest in connection with Docket Nos. CI77-298, IN79-3, G-6635, G-6636, G-3884, and G-3887 (and related rate schedules) pursuant to the NGPA;

(D) Sun shall not make sales of natural gas in intrastate commerce from Sun's interests in the natural gas production committed or dedicated to interstate commerce under the certificates of public convenience and necessity described below, unless and until Sun seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the Natural Gas Act and § 157.30 of the Commission's issued regulations thereunder:

(1) That certificate of public convenience and necessity, as amended, originally issued by the Federal Power Commission to Sun Oil Company on May 28, 1956 in FPC Docket No. G-6636 authorizing sales by Sun Oil Company to Tennessee Gas Transmission Company of natural gas produced from the Seeligson Field, Jim Wells County, Texas;

(2) That certificate of public convenience and necessity issued by the Federal Power Commission to Sunray Oil Corporation on December 15, 1958 in FPC Docket No. G-3887 authorizing sales by Sunray Oil Corporation to Tennessee Gas Transmission Company of natural gas produced from the Seeligson Field, Jim Wells County, Texas;

(3) That certificate of public convenience and necessity issued by the Federal Power Commission to Sun Oil Company on May 28, 1956 in FPC Docket No. G-6635 authorizing sales by Sun Oil Company to Tennessee Gas Transmission Company of natural gas produced from the Chesterville Area, Colorado and Wharton Counties, Texas; and

(4) That certificate of public convenience and necessity issued by the

Federal Power Commission to Sunray Oil Corporation on December 15, 1958 in FPC Docket No. G–3884 authorizing sales by Sunray Oil Corporation to Tennessee Gas Transmission Company of natural gas produced from the Edinburg Field, Hidalgo County, Texas.

(E) Sun shall not make sales of natural gas to any party or entity pursuant to the surplus gas clauses contained in the contracts identified below, and for a period of ten years from the date of issuance of this Order, Sun shall not make sales of natural gas to any party or entity pursuant to any surplus gas clause contained in any gas purchase and sale contract certificated under the NGA that is identical or similar to the clauses identified below, unless and until Sun seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's regulations issued thereunder:

(1) Clause 2(f) of the contract dated May 25, 1948 among Tennessee Gas Transmission Company, Sun Oil Company and others, which contract encompassed Sun Oil Company's interest in the Seeligson Field, Jim Wells County, Texas;

(2) Clause 5(h) of the contract dated April 1, 1958 between Tennessee Gas Transmission Company and Sun Oil Company, which contract encompasses Sun Oil Company's interest in the Seeligson Unit, Jim Wells County, Texas;

(3) Clause 5(h) of the contract dated March 1, 1958 between Tennessee Gas Transmission Company and Sunray Oil Corporation, which contract encompassed Sunray Oil Corporation's, interest in the Seeligson Unit, Jim Wells County, Texas;

(4) Clause 3(b) of the contract dated December 1, 1946 among Tennessee Gas and Transmission Company and Magnolia Petroleum Co. and others which contract encompassed Sun Oil Company's interest in the Chesterville Area, Colorado and Wharton Counties, Texas; and

(5) Clauses 6 (e) and (f) of the contract dated April 1, 1952 between Tennessee Gas Transmission Company and Sunray Oil Corporation, which contract encompassed Sunray Oil Corporation's interest in the Edinburg Field, Hidalgo County, Texas.

(F) Except for those interests in certain specified zones from which natural gas has been sold to Tennessee by Sun and Sunray pursuant to contracts dated October 4, 1960 and December 23, 1960, respectively (and certificated by the Commission in Docket Nos. CI61–657 and CI61–1103), all of Sun's interests in all zones below what is know as "Zone 20–C4", as described in the contracts referred to in paragraphs (E)(2) and (E)(3), *supra*, in the Seeligson Field, Jim Wells County, Texas, were not dedicated and are not deemed to have been or to be dedicated to interstate commerce within the meaning of the NGA or committed or dedicated to interstate commerce within the meaning of the NGPA.

(G) The Commission hereby terminates with prejudice as to Sun and its predecessors (including Sunray) (1) all proceedings in Commission Docket Nos. CI77–298 and IN79–3, and (2) all pending and potential matters in Docket Nos. G–6635, G–6636, G–3884, and G–3887 (and the corresponding rate schedules) only insofar as they relate to the issues raised in Docket Nos. CI77–298 and IN79–3 or in the attached Stipulation and Consent Agreement.

(H) The Commission hereby orders that any and all administrative or judicial claims, demands, liabilities, rights, obligations or causes of action, known or unknown, asserted or not asserted, without limitation, arising out of, related to, or connected with the matters under investigation in Docket Nos. CI77–298 or IN79–3; the pending and potential matters in Docket Nos. G–6635, G–6636, G–3884, and G–3887 (and the corresponding rate schedules) which relate to the issues raised in Docket Nos. CI77–298 or IN79–3; or referred to in the attached Stipulation and Consent Agreement are released as to Sun and its predecessors (including Sunray), successors, officers, directors, employees, agents, servants, directors, representatives, assigns, affiliates and subsidiaries.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Stipulation and Consent Agreement

In the Matter of Tenneco Inc. *et al.;* Docket No. IN79–3.

The Federal Energy Regulatory Commission Staff ("Staff") and Sun Exploration and Production Company ("Sun") stipulate and agree to the following:

I.

On February 28, 1977, Tenneco Inc. ("Tenneco") petitioned the Federal Power Commission, the predecessor to the Federal Energy Regulatory Commission (collectively "Commission"), for a declaratory order (Docket No. CI77–298) resolving alleged uncertainties as to whether all necessary filings had been made and all necessary regulatory authority obtained in connection with certain sales of natural gas by various producers to an intrastate pipeline, Channel Industries Gas Company ("Channel"), a wholly-owned subsidiary of Tenneco Corp.,[1] from fields in which certificated sales were being made to Tennessee Gas Pipeline Company ("Tennessee"), a division of Tenneco, or its predecessors. Tenneco supplemented its petition for declaratory order by filings dated March 18, 1977 and July 1, 1977.

Tenneco's petition raised alleged uncertainties regarding three fields in which Sun has an interest: (1) the Seeligson Field, located in Jim Wells County, Texas; (2) the Edinburg Field in Hidalgo County, Texas; and (3) the Chesterville Field in Colorado and Wharton Counties, Texas.[2]

In the course of the proceeding in Docket No. CI77–298, it came to the Commission's attention that the transactions under investigation may involve potentially serious violations of the Natural Gas Act ("NGA") and the Natural Gas Policy Act of 1978 ("NGPA"). Because of the nature of the potential violations, the Commission decided that its Staff should investigate the acts and transactions pursuant to the Commission's Rules Relatiang to Investigations, 18 CFR Part 1b. Thereafter, the Commission suspended Docket No. CI77–298 by order issued January 29, 1979, and initiated Docket No. IN79–3, also by order issued January 29, 1979. The Commission subsequently terminated the proceeding in Docket No. CI77–298 by order issued December 10, 1980.[3]

In the course of the private investigation conducted in Docket No. IN79–3, Staff examined the record, including the testimony and exhibits, in Docket No. CI77–298, took additional testimony from representatives of, and subpoenaed documents from, a number of companies involved in the investigation, including Sun. After reviewing the relevant information gathered in the course of its investigation in Docket No. IN79–3 and elicited in Docket No CI77–298, Staff met with representatives of Sun to discuss settlement of this investigation as it relates to Sun and its precedessors, including Sunray. This Stipulation and Consent Agreement is the product of those settlement discussions.

II.

A. *Seeligson Field.* Two different types of transactions in the Seeligson Field are involved in this investigation. First, Sun,

[1] Tenneco Corp. is a 98 percent owned subsidiary of Tenneco.

[2] In 1968, Sunray DX Oil Company, the successor to Sunray Oil Corporation and Sunray Mid-Continent Oil Company (collectively "Sunray"), was merged into Sun. At that time Sun acquired Sunray's interest in the Seeligson and Edinburg Fields. Sunray had no interest in the Chesterville Field that is the subject of this investigation. With regard to events occurring, agreements made, or actions taken during or after 1968, all references to "Sun" also shall include "Sunray", as the predecessor in interest to Sun. With respect to events occurring, agreements made, or action taken prior to 1968, "Sun" and "Sunray" shall be referred to separately.

[3] A petition for review of that order currently is pending before the United States Court of Appeals for the Fifth Circuit, Tenneco Inc., V. FERC (5th Cir. N. 81–4049). For a detailed discussion of the reasons for the suspension and subsequent termination of CI77–298, see Commission Opinion No. 41, issued June 13, 1979, and the Order issued December 10, 1980.

Sunray, and other producers made sales to Channel of natural gas which the producers contend was "surplus" to Tennessee's needs, *i.e.* gas produced from the Seeligson Unit which the producers contend was offered to and rejected by Tennessee and sold to Channel in accordance with "surplus gas" clauses contained in certain contracts between the producers and Tennessee which had been certificated by the Commission. Second, Sunray and other producers made sales to Channel from non-unitized deep zones underlying the Seeligson Unit.

1. *Sales to Tennessee from the Seeligson Unit.* On or about May 25, 1948, Sun, Sunray and other natural gas producers entered into an agreement (the "1948 Contract") with Tennessee's predecessor, Tennessee Gas Transmission Company, for the purchase and sale of a quantity of natural gas from certain acreage in the Seeligson Field. The 1948 Contract contained a provision authorizing the sale of surplus residue gas to third parties, if the volumes first were tendered to and rejected by Tennessee.

Following the Supreme Court's decision in *Phillips Petroleum Corp. v. Wisconsin*, 347 U.S. 672 (1954), Sun and Sunray filed applications for certificates of public convenience and necessity authorizing their sales to Tennessee and submitted the 1948 Contract as their respective rate schedules. In each instance, the Commission issued the requested certificate and accepted the 1948 Contract as the rate schedule under which the sale was to be made.

By agreement dated April 2, 1956, Sun, Sunray, and the other producers entered into a unit agreement which superseded a prior arrangement and unitized all oil and gas interests in the Seeligson Field down to the base of Zone 20–C4. By order issued November 19, 1957, the Texas Railroad Commission approved the unitization agreement finding, among other things that the agreement covered only that part of the field reasonably defined by development. In early 1958, each of the producers, including Sun and Sunray, entered into separate replacement contracts with Tennessee which canceled and superseded the 1948 Contract effective March 1, 1958, and had the effect of conforming the replacement contracts with the new Seeligson Unit. Among other things, the replacement contracts (a) committed gas from the dedicated acreage down to and including Zone 20–C4, (b) included additional acreage not subject to the 1948 Contract, and (c) reserved to the producers the right to sell to others surplus gas above the quantities required to be available to Tennessee.

Sun, the operator of the Seeligson Unit, and Sunray filed their replacement contracts as supplements to the existing rate schedules covering their sales under the 1948 Contract. In addition, Sun petitioned the Commission to amend the certificate previously issued to Sun to conform the certificate so as to authorize Sun to sell gas to Tennessee under the replacement contract. By orders dated March 26, 1959 and April 13, 1959, the Commission accepted the replacement contracts for filing, terminated the existing rate schedules and established new rate schedules for Sun's and Sunray's sales pursuant to the replacement contracts. By order issued June 9, 1960, the Commission granted Sun's petition to amend its certificate. The Order specifically stated that Sun had filed its petition to amend its certificate by adding additional sources of natural gas.

2. *Surplus Gas Sales to Channel.* During January 1966, Tennessee advised the producers that it would be unable to take the contract quantity of 80,000 Mcf per day effective March 1, 1966, because of limited markets and limited line capacity following the sale of a segment of its Agua Dulce-Kinder line to Channel. Tennessee advised it would take only 54,000 to 60,000 Mcf of gas per day. The producers advised Tennessee that they would enforce the take-or-pay provisions of the replacement contracts, and in March 1966 the producers began to bill Tennessee for the difference between the actual takes and the take-or-pay quantity as provided by the replacement contracts. Consequently, the producers, at Tennessee's urging, considered invoking the surplus gas provisions in the replacement contracts in order to sell surplus gas to Channel on a day-to-day basis.

Socony Mobil Oil Company, Inc. ("Mobil"), as Sellers' Representative, notified Tennessee on March 31, 1966 that it was invoking the surplus gas provisions of the replacement contracts and that the unit owners intended to sell volumes of surplus gas pursuant to the provisions thereof. On April 7, 1966, Tennessee agreed that a surplus gas reserve existed and that the unit owners could sell such surplus gas reserves. On April 15, 1966, Mobil, on behalf of all interest owners in the Seeligson Unit, executed a contract with Channel for the sale of up to 25,000 Mcf per day of surplus gas. The price of the surplus gas sold under the contract with Channel was to be the same as the price paid by Tennessee under the replacement contracts. Deliveries to Tennessee from the unit continued, and in fact increased, after execution of the surplus gas agreement.

Neither Sun no Sunray requested Commission authorization pursuant to section 7 of the NGA and the Commission's regulations thereunder in connection with the surplus gas sale to Channel. None of the other interest owners in the Seeligson Unit sought such authorization in conection with their surplus gas sales to Channel. The last deliveries under the surplus gas contract with Channel were made in 1973, and the contract was terminated effective October 8, 1976. From 1966 to 1973, Sun (including sales by Sunray) sold approximately 27.6 Bcf of surplus gas to Channel under the April 15, 1966 surplus gas contract. Sun's sales to Tennessee from the Seeligson Unit are continuing.

3. *Deep Zone Sales to Channel.* On March 3, 1965, Sunray entered into an agreement with Channel for the sale of gas from specified deep zones. (*i.e.*, zones below Zone 20–C4) underlying the Seeligson Unit. The initial price for the gas was 14 cents per Mcf, one-half cent less than the price then being paid to Sunray under its 1958 replacement contract with Tennessee. Pursuant to the March 3, 1965 contract, the price paid by Channel subsequently increased and exceeded the price then being paid by Tennessee under Sunray's 1958 replacement contract. At about the same time, three other producers also entered into purchase and sale contracts with Channel for the sale of gas from deep zones underlying the Seeligson Unit.

Sunray did not request Commission authorization pursuant to Section 7 of the NGA and the Commission's regulations thereunder in connection with the March 3, 1965 contract with Channel. None of the other three producers who made similar deep zone sales to Channel sought such authorization in connection with their sales. Sales by Sun to Channel under the March 3, 1965 contract are continuing, and through June 1981, approximately 70 Bcf of gas has been sold to Channel pursuant to the contract.

B. *Chesterville Field.* On December 1, 1946, Sun and other producers entered into a contract (the "1946 Contract") to sell natural gas to Tennessee from various leases in the Chesterville Unit, Colorado and Wharton Counties, Texas. The 1946 Contract reserved to the producers the right to sell to third parties surplus gas, *i.e.*, gas tendered to and rejected by Tennessee. Sales to Tennessee under that contract were certificated by the Commission following the *Phillips* decision, and the contract was filed with the Commission as a rate schedule in accordance with the Commission's regulations.

When the available supply of gas apparently exceeded Tennessee's ability to take the gas, in March 1966, discussions began between the producers and Tennessee concerning the existence of surplus gas in the Chesterville Unit. Later that same year, Channel submitted to the operator, Mobil, proposed contracts for the purchase of any available surplus gas. On January 26, 1967, Tennessee formally notified the producers that surplus gas existed in the Chesterville Unit and that such surplus gas could be sold to others. Thereafter, the producers contracted to sell surplus gas to Channel from the Chesterville Unit at a price less than that prevailing under the Tennessee contract. The contracts specified that the sales to Channel were subject to the terms and conditions of the 1946 Contract with Tennessee.

Neither Sun nor any of the other producers in question requested Commission authorization pursuant to Section 7 of the NGA and the Commission's regulations thereunder in connection wtih the sales of surplus gas to Channel from the Chesterville Unit. Sales of surplus gas were made by the producers to Channel from 1967 to late 1973. During that time sales to Tennessee from the Chesterville Unit continued. In January 1974, the surplus gas sale to Channel ended when Tennessee elected to take all the gas from the Chesterville Unit. Sun's total surplus sales to Channel from the Chesterville Unit were .065 Bcf (65,000 Mcf), all of Sun's gas currently is being sold to Tennessee pursuant to a replacement contract dated July 14, 1981.

C. *Edinburg Field.* On April 1, 1952, Sun and Sunray entered into separate agreements to sell natural gas to Tennessee from various leases in the Edinburg Field in Hidalgo County, Texas (the "1952 Contract"), the contracts were identical in all material respects, and in each case, the contract

quantity was determined by reference to the volume of recoverable gas originally in place. In addition, each contract authorized the sale to third parties of gas offered to Tennessee and determined by Tennessee to be in excess of its requirements.

Sales under these contracts were certificated by the Commission following the *Phillips* decision, and the contracts were filed with the Commission as rate schedules in accordance with the Commission's regulations. In 1963, the producers and Tennessee agreed that the committed reserves under the 1952 contracts were approximately 100 Bcf. The producers attempted to sell the reserves in excess of 100 Bcf to Tennessee, which declined to pruchase those volumes. On September 1, 1966, Sunray and others contracted to sell the reserves in excess of 100 Bcf to Channel. All sales to Channel were at a price less than or equal to the price under the Tennessee contract.

Neither Sunray nor any of the other producers in question requested Commission authorization pursuant to Section 7 of the NGA and the Commission's regulations thereunder in connection with these surplus sales to Channel. The surplus sales to Channel continued through 1973 and ceased when the reserves committed to Channel were depleted. Sunray's total sales to Channel from the Edinburg Field were 3.03 Bcf. Sales to Tennessee, which continued during the pendency of the Channel sales, are continuing under a replacement contract dated January 1, 1980.

III.

Sun's position throughout these proceedings has been that its sales to Channel were lawful and proper in all respects. Conversely, except as specified in Part IV (11) below, it has been the Staff's position with regard to the circumstances described in Part II above, that all natural gas attributable to Sun's interests in the Seeligson Unit, Chesterville unit and Edinburg Field that ultimately was sold to Channel was dedicated to interstate commerce as the result of the certificates of public convenience and necessity issued to Sun or Sunray in Docket Nos. G–3884, G–3887, G–6635, and G–6636 and that Sun's and Sunray's sales to Channel from those fields constituted an abandonment of service to the interstate natural gas market and civil violations of Section 7(b) of the NGA and Section 157.30 of the Commission's regulations thereunder. Furthermore, the Staff has contended that certain of those sales to Channel were made at prices in excess of those permitted by the NGA and the NGPA and that those sales constituted civil violations of the NGA and the NGPA.

Sun admits the facts set forth in Part II above. However, for purposes of this agreement, Sun neither admits nor denies that any of its or its predecessor's actions or omissions constitute a violation of the NGA, NGPA, or any regulation thereunder. Furthermore, if any of the facts admitted by Sun are found to constitute violations, Sun expressly denies that any such violations were willful and knowing violations of the NGA, NGPA, any other statute, or any regulation.

Solely to avoid the expense and burden of litigation, and in full settlement of any and all administrative and civil liabilities under the NGA or the NGPA, including the imposition of civil penalties and any other civil and administrative relief, which have or may have arisen from the transactions, acts or omissions that are the subject of the investigations in Docket Nos. CI77–298 or IN79–3 or of this Stipulation and Consent Agreement, the Staff and Sun, without making any explicit or implicit admissions (except as expressly set forth in this Stipulation and Consent Agreement) and without receding from their legal positions, agree and stipulate as follows:

(1) Within sixty (60) days after a Commission order approving this Stipulation and Consent Agreement *in toto* becomes final without modification and is no longer subject to judicial review, Sun will execute and deliver a corporate undertaking, in the form of the undertaking attached as Appendix 1, evidencing its obligation to pay ten million, five hundred thousand dollars ($10,500,000), plus interest accruing from the date of the Commission order approving this Stipulation and Consent Agreement *in toto*, solely for the purpose of making restitution to interstate customers of Tennessee Gas Pipeline Company. The undertaking will provide for Sun to disburse the aggregate principal amount thereof, together with interest accrued from the date of the Commission order approving this Stipulation and Consent Agreement *in toto* to the date of disbursement in accordance with the provisions of § 154.102 of the Commission's Regulations, 18 CFR 154.102, to such of Tennessee's interstate customers and in such amounts and in such manner as the Commission by order shall direct. No part of any payments made by Sun pursuant to this paragraph (1) or paragraph (2) shall constitute any form of fine, penalty or forfeiture or a compromise of any form of fine, penalty or forfeiture.

(2) Alternatively, in Sun's sole and unqualified discretion, Sun may satisfy completely its obligations under paragraph (1) by paying to an escrow agent ten million, five hundred thousand dollars ($10,500,000), plus interest, if any, accruing in accordance with 18 CFR 154.102 from a date sixty (60) days after the date of the Commission order approving this Stipulation and Consent Agreement *in toto* until the date of deposit with the escrow agent, who will administer the funds pursuant to the provisions of the Escrow Agreement which is attached as Appendix 2. The payment of such funds to the escrow agent shall toll the running of all interest on such funds, and, notwithstanding the provisions of 18 CFR 154.102 or any other regulation or statute addressing the issue of interest, Sun shall be liable for no interest on the funds delivered to the escrow agent. If the escrow agent returns the escrow fund to Sun pursuant to paragraph 15 of the attached Escrow Agreement, interest shall accrue on such funds in accordance with 18 CFR 154.102 from the date of the return of such funds to the date of disbursement to such of Tennessee's interstate customers and in such amounts as the Commission by order shall direct. In the event of such return or funds, Sun shall continue to comply with the provisions of this Stipulation and Consent Agreement.

(3) Within sixty (60) days after a Commission order approving this Stipulation and Consent Agreement *in toto* becomes final without modification and is no longer subject to judicial review, Sun will pay two hundred and fifty thousand dollars ($250,000) to the Treasury of the United States of America in compromise and settlement of any and all civil penalties, including those under the NGPA, which may have been asserted in connection with the matters that are the subject of Docket Nos. CI77–298 and IN79–3 or this Stipulation and Consent Agreement. Except to the limited extent provided in this paragraph (3), the Staff agrees that the imposition of any penalties or fines for any alleged statutory or regulatory violation that Sun may have committed is not appropriate and such penalties or fines will not be sought from Sun.

(4) Sun hereafter will not make sales of natural gas in intrastate commerce from Sun's interests in the natural gas production committed or dedicated to interstate commerce under the certificates of public convenience and necessity described below, unless and until Sun seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's regulations thereunder:

(a) That certificate of public convenience and necessity, as amended, originally issued by the Federal Power Commission to Sun Oil Company on May 28, 1956 in FPC Docket No. G–6636 authorizing sales by Sun Oil Company to Tennessee Gas Transmission Company of natural gas produced from the Seeligson Field, Jim Wells County, Texas;

(b) That certificate of public convenience and necessity issued by the Federal Power Commission to Sunray Oil Corporation on December 15, 1958 in FPB Docket No. G–3887 authorizing sales by Sunray Oil Corporation to Tennessee Gas Transmission Company of natural gas produced from the Seeligson Field, Jim Wells County, Texas;

(c) That certificate of public convenience and necessity issued by the Federal Power Commission to Sun Oil Company on May 28, 1956 in FPC Docket No. G–6635 authorizing sales by Sun Oil Company to Tennessee Gas Transmission Company of natural gas produced from the Chesterville Area, Colorado and Wharton Counties, Texas; and

(d) That certificate of public convenience and necessity issued by the Federal Power Commission to Sunray Oil Corporation on December 15, 1958 in FPC Docket No. G–3884 authorizing sales by Sunray Oil Corporation to Tennessee Gas Transmission Company of natural gas produced from the Edinburg Field, Hidalgo County, Texas.

(5) Sun hereafter will not make sales of natural gas to any person or entity pursuant to the surplus gas clauses contained in the contracts identified below, and, for a period of ten years from the date of issuance of an Order approving this Stipulation and Consent Agreement *in toto*, Sun will not make sales of natural gas to any person or entity, pursuant to any surplus gas clause contained in any gas purchase and sale contract certificated

under the NGA that is identical or similar to the clauses identified below unless and until Sun seeks and obtains the authorization that is necessary pursuant to Section 7(b) of the NGA and § 157.30 of the Commission's regulations thereunder:

(a) Clause 2(f) of the contract dated May 25, 1948 among Tennessee Gas Transmission Company, Sun Oil Company and others, which contract encompassed Sun Oil Company's interest in the Seeligson Field, Jim Wells County, Texas;

(b) Clause 5(h) of the contract dated April 1, 1958 between Tennessee Gas Transmission Company and Sun Oil Company, which contract encompasses Sun Oil Company's interest in the Seeligson Unit, Jim Wells County, Texas;

(c) Clause 5(h) of the contract dated March 1, 1958 between Tennessee Gas Transmission Company and Sunray Oil Corporation, which contract encompassed Sunray Oil Corporation's interest in the Seeligson Unit, Jim Wells County, Texas;

(d) Clause 3(b) of the contract dated December 1, 1946 among Tennessee Gas and Transmission Company, Magnolia Petroleum Co. and others, which contract encompassed Sun Oil Company's interest in the Chesterville Area, Colorado and Wharton Counties, Texas; and

(e) Clauses 6(e) and (f) of the contract dated April 1, 1952 between Tennessee Gas Transmission Company and Sunray Oil Corporation, which contract encompassed Sunray Oil Corporation's interest in the Edinburg Field, Hidalgo County, Texas.

IV.

(1) Except as expressly stipulated, acknowledged and agreed herein, neither the Staff nor Sun makes or has made any admissions, acknowledgements or agreements in connection herewith.

(2) The Staff and Sun agree that, upon the issuance of a Commission order approving this Stipulation and Consent Agreement, this Stipulation and Consent Agreement shall resolve as to Sun and its predecessors (including Sunray), and their officers, directors, employees, agents, servants, and representatives, both past and present, any and all administrative and civil matters, demands, liabilities, or claims set forth or referred to in this Stipulation and Consent Agreement or that were the subject of investigation in Docket Nos. CI77–298 or IN79–3. Moreover, any and all administrative or judicial claims, demands, liabilities, rights, obligations, or causes of action, known or unknown, asserted or not asserted, without limitation, arising out of, related to or connected with the matters under investigation in Docket Nos. CI77–298 or IN79–3; the pending and potential matters in Docket Nos. G–6635, G–6636, G–3884, and G–3887 (and the corresponding rate schedules) which relate to the issues raised in Docket Nos. CI77–298 or IN79–3; or the matters referred to in this Stipulation and Consent Agreement are released by the Commission as to Sun and its predecessors (including Sunray), and the Commission is forever barred from filing or refiling them against Sun, its officers, employees, agents, servants, directors, representatives, predecessors, successors, assigns, affiliates and subsidiaries. Subject to the provisions of Paragraph (12) below, this Stipulation and Consent Agreement shall in no way restrict or infringe upon the Commission's right to provide documents or information obtained in the course of its investigations involving Sun to other governmental departments or agencies.

(3) As part of the Commission's order approving this Stipulation and Consent Agreement *in toto*, the Commission shall terminate with prejudice as to Sun (a) all proceedings in Commission Docket Nos. CI77–298 and IN79–3 and (b) all pending and potential matters in Docket Nos. G–6635, G–6636, G–3884, and G–3887 (and the corresponding rate schedules) only insofar as they relate to the issues raised in Docket Nos. CI77–298 and IN79–3 or in this Stipulation and Consent Agreement.

(4) Sun waives notice of assessment and assessment by order pursuant to the NGPA in connection with the payment of the civil penalties provided for herein.

(5) The Staff and Sun state that they enter into this Stipulation and Consent Agreement voluntarily and that other than the agreements provided herein, no tender, offer, promise, or threat of any kind whatsoever has been made by either of them, or any member, officer, agent or representative thereof, to induce the other to enter into this Stipulation and Consent Agreement.

(6) This Stipulation and Consent Agreement represents a negotiated settlement in the public interest for the purpose of settling as to Sun and its predecessors (including Sunray) all administrative and civil liability in connection with the matters referred to above in Paragraphs (2) and (3) of this Part IV.

(7) By this Stipulation and Consent Agreement, the Staff evidences its intention to settle entirely only the matters referred to herein within the Commission's jurisdiction and within the Commission's authority to settle.

(8) With the exception of Sun's right to put funds in escrow at its option, the provisions of Section III of this Stipulation and Consent Agreement shall not become operative until all Commission orders contemplated by this Stipulation and Consent Agreement are final and no longer subject to judicial review. Moreover, the provisions of Section III shall not become operative if any of the Commission orders contemplated by this Stipulation and Consent Agreement are reversed, vacated, or modified by any court or tribunal.

(9) The parties agree to be bound by the provisions of this Stipulation and Consent Agreement as of the date when a Commission order approving the Stipulation and Consent Agreement *in toto* becomes final without modification and is no longer subject to judicial review. Except as provided in Paragraph (10) below, the parties to this Stipulation and Consent Agreement expressly waive and voluntarily relinquish their rights to appeal from or seek any further review of any Commission order approving this Stipulation and Consent Agreement *in toto*.

(10) Should the Commission reject this Stipulation and Consent Agreement or issue an order approving this Stipulation and Consent Agreement in part but not in whole, or should the Commission incorporate in its approval of this Stipulation and Consent Agreement any restriction, qualification or condition not provided for herein, and should the effect of such partial, restricted, qualified or conditional approval be of such a nature as to lessen the benefits or rights or increase the burdens or obligations of Sun, as determined in its sole and unqualified discretion, then Sun shall have the right to accept such partial, restricted, qualified or conditional approval, or to reject such partial, restricted, qualified or conditional approval by written notice to the Commission within thirty (30) days after issuance of such order. Should a court reject this Stipulation and Consent Agreement or issue an order approving this Stipulation and Consent Agreement in part but not in whole, or should a court incorporate in its approval of this Stipulation and Consent Agreement any restriction, qualification or condition not provided for herein, and should the effect of such partial, restricted, qualified or conditional approval be of such a nature as to lessen the benefits or rights or increase the burdens or obligations of either the Commission or Sun, as determined by each in its sole and unqualified discretion, then the Commission and Sun shall each have the right to accept such partial, restricted, qualified or conditional approval, or to reject such partial, restricted, qualified or conditional approval by written notice to the other party or to the court within thirty (30) days after the issuance of such order. Upon rejection pursuant to this paragraph by either party, this Stipulation and Consent Agreement shall be null and void and of no effect whatsoever. Sun also reserves the right to seek rehearing or judicial review of any modifications which the Commission or a court may impose on this agreement.

(11) In view of the full and final settlement set forth in this Stipulation and Consent Agreement and for the purpose of effectuating an equitable resolution and final termination of the matters in the above-described investigations as they relate to Sun, it is recognized and agreed by the Staff and Sun that, except for those interests in certain specified zones from which natural gas has been sold to Tennessee by Sun and Sunray pursuant to contracts dated October 4, 1960 and December 23, 1960, respectively (and certificated by the Commission in Docket Nos. CI61–657 and CI61–1103), all of Sun's interests in all zones below what is known as "Zone 20–C4", as described in the contracts referred to in Parts III(5)(b) and III(5)(c) of this Stipulation and Consent Agreement, in the Seeligson Field, Jim Wells County, Texas, were not dedicated and are not deemed to have been or to be dedicated to interstate commerce within the meaning of the NGA or committed or dedicated to interstate commerce within the meaning of the NGPA.

(12) Sun agrees that, when the Commission orders specified in Paragraph (3) above become final without modification and are no longer subject to judicial review, Sun shall provide copies of all non-privileged and non-

proprietary documents and other written materials which may be requested by the Commission relating to issues raised in Commission Docket Nos. CI77–298 or IN79–3; provided, however, that in so agreeing, neither Sun nor any of its officers, directors, employees, agents, servants or representatives, both past and present, shall be deemed to have waived or relinquished any rights, privileges, or other protections established by law to which it or they otherwise may be entitled. The Commission shall reimburse Sun for the reasonable copying costs associated with such requests. Sun further agrees that the provisions of this paragraph shall in no way limit or prejudice the Commission's rights to obtain such documents and information through subpoena, negotiation, or other means provided by law. Except for those documents that the Commission is required by law to maintain, it is further provided that all documents provided to the Commission by Sun, and any copies of such documents made by the Commission, shall remain the property of Sun, shall not be agency records, and upon the conclusion of the investigation in Docket No. IN79–3, all originals and copies of such documents shall be returned promptly to Sun. The Staff further agrees that, should any person, party, association, governmental body or authority make a request under any applicable statute or regulation or otherwise to the Commission to inspect, review, or obtain copies of any documents provided by Sun pursuant to this paragraph, the Commission shall forthwith inform Sun of such request, shall provide Sun an opportunity to respond to the request, and shall not release for inspection, review, or copying any such documents until ten working days after having notified Sun of such request.

(13) Each of the undesigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts the agreement on that party's behalf.

Agreed to and accepted this 29th day of September, 1982.

Federal Energy Regulatory Commission Staff.

Marilyn L. Doria, *Assistant General Counsel, Office of General Counsel, Enforcement Division.*

Sun Exploration and Production Company.

Thomas W. Lynch,

Vice President, Legal.

Appendix 1

Agreement and Corporate Undertaking of Sun Exploration and Production Company

In the Matter of Tenneco Inc. *et al.*

Sun Exploration and Production Company ("Sun") hereby agrees and undertakes to pay $10,500,000 plus interest accruing from , 1982, the date of the relevant Commission order in this docket, calculated in accordance with the provisions of 18 CFR 154.102, solely for the purpose of making restitution to such interstate customers of Tennessee Gas Pipeline Company in such amounts and in such manner as the Commission by further order shall direct. Sun has caused this agreement and corporate undertaking to be executed and sealed in its name by its officer thereupon duly authorized in accordance with the terms of the resolution of its Board of Directors, a certified copy of which is appended hereto this day of , 1982.

Sun Exploration and Production Company.

By_____

Attest:

Assistant Secretary_____

Certificate

I, Marjorie J. Jowell, Secretary of Sun Exploration and Production Company, formerly named Sun Oil Company (Deleware), do hereby certify that at a meeting of the board of directors of said Sun Oil Company (Delaware) held at the office of the company in Philadelphia, Pennsylvania, on the 21st of September, 1971, a quorum being present, the following resolution was presented and unanimously adopted:

Resolved, That the President, any Vice President, the Secretary, and the Treasurer of this corporation be and hereby are authorized and directed, jointly or individually: to enter into, execute and deliver in the name of the corporation, contracts, bonds, leases, deeds, easements, and other instruments relating to the acquisition or disposition of real and personal property and contract rights, and any corrections, modifications or supplements thereto; to enter into, execute and deliver in the name of the corporation any bond or agreement of suretyship; to endorse checks, drafts, and bills of lading; to endorse notes payable to the corporation for the purpose of having them discounted, and the proceeds deposited in any bank or trust company, and for the purpose of having said notes collected by said bank or trust company; to certify invoices of merchandise sold and delivered to any party or parties, incuding the federal and state governments and political subdivisions thereof, as well as foreign commercial invoices; and to do or cause to be done, for or in behalf of the corporation all acts necessary to perform the foregoing.

Resolved, That the President, any Vice President, the Secretary, and the Treasurer of this corporation be and hereby are authorized and directed, jointly or individually, to enter into, execute and deliver in the name of the corporation alone or jointly with any other company or person, bids, leases, releases, bonds, contracts, or other instruments pertaining to oil and gas leases or sulphur leases or other mineral leases in submerged lands or mineral rights of the Gulf of Mexico, Atlantic Ocean and Pacific Ocean offered for sale by the United States under the Outer Continental Shelf Lands Act, or offered for sale by any state, also to enter into, execute, and deliver in the same manner any correction, modification or supplement thereof or thereto; and also to do or cause to be done for or on behalf of the corporation all acts necessary to carry out and perform the above. Any similar prior action taken by either or any of the above-mentioned officials is hereby ratified and confirmed.

Resolved, That the officers of the corporation are hereby authorized at their discretion from time to time to delegate in writing the performance of their respective responsibilities within the limits of their corporate authorities, then obtaining, including, without limiting, the generality of the foregoing, delegation of their respective spending authorities within the limits of approved projects and budgets, and the officers are further authorized from time to time to execute such documents, instruments, and powers of attorney, delegating and authorizing performance of their respective responsibilities as each such officer may deem appropriate under the circumstances.

I further certify that the foregoing resolution is now in full force and effect and that is a duly elected and acting of said corporation with authority to execute and deliver for and on behalf of said corporation papers and instruments of a nature described in said resolution.

In Witness Whereof, I have hereunto set my hand and seal of said SUN EXPLORATION AND PRODUCTION COMPANY at Dallas, Texas, this day of , 1982.

Secretary_____

Appendix 2

Escrow Agreement

This agreement is made and entered into this day of , 1982 by and between Sun Exploration and Production Company (hereinafter called "Sun"), a Delaware corporation, and Interfirst Bank, Dallas, N.A. (hereinafter called "Escrow Agent" or "Bank"), a national bank with trust powers located in Dallas, Texas.

Witnesseth

Whereas, on January 29, 1979 the Federal Energy Regulatory Commission (hereinafter called "Commission") instituted an investigation to determine, among other things, whether certain sales of natural gas to Channel Industries Gas Company may have violated the Natural Gas Act or the Natural Gas Policy Act of 1978;

Whereas, by Stipulation and Consent Agreement dated , 1982 the Commission Staff and Sun agreed to a complete settlement of the investigation as to Sun which required Sun either to execute and deliver a corporate undertaking evidencing its obligation to pay Ten Million, Five Hundred Thousand Dollars ($10,500,000) plus interest or to pay Ten Million, Five Hundred Thousand Dollars ($10,500,000) plus applicable interest, if any, into an escrow account for the sole purpose of making restitution to interstate customers of Tennessee Gas Pipeline Company (hereinafter called "Tennessee") to be disbursed in such amounts and in such manner as the Commission by further order shall direct;

Whereas, the Commission issued an Order dated , 1982 approving the Stipulation and Consent Agreement *in toto*; and

Whereas, Sun has elected to satisfy its obligations thereunder by paying the settlement amount of Ten Million, Five Hundred Thousand Dollars ($10,500,000) plus applicable interest, if any, into an escrow account,

Now, Therefore, in consideration of the foregoing and of the mutual convenants hereinafter set forth, it is mutually agreed as follows:

1. Sun hereby designates and appoints the Bank as Escrow Agent to receive, hold, invest, and distribute the monies paid into escrow in accordance with the terms and provisions set forth herein.

2. Within ten (10) banking days from the date of execution of this Escrow Agreement, Sun will transfer and deliver to the Escrow Agent the settlement amount of Ten Million, Five Hundred Thousand Dollars ($10,500,000), plus applicable interest, if any, provided for in the Commission's Order of , 1982 (hereinafter called "Initial Escrow Fund"). The Escrow Agent will acknowledge receipt of the Initial Escrow Fund to Sun and the Commission in writing.

3. The Escrow Agent shall invest and reinvest the Initial Escrow Fund, at Sun's direction (as indicated by Sun in writing to the Escrow Agent), in any one or more of the following:

(a) Time certificate(s) of deposit issued by the Bank, to be held in the name of the Bank as Escrow Agent, which have maturities of one year or less from the date of purchase in denominations and for maturities directed by Sun, which certificate(s) of deposit shall bear interest at the highest rate being quoted by the Bank on the date of issuance thereof for certificates of deposit of substantially the same denomination and maturity;

(b) Direct obligation of the United States in the form of Treasury Bills or other evidences of indebtedness or obligations fully guaranteed, both as to principal and interest, by the United States of America which have maturities of one year or less from the date of purchase; provided, the Escrow Agent shall have no liability for any loss due to fluctuations in the market price of Treasury Bills or other debt obligations referred to in this subparagraph (b).

(c) Commercial paper with a maturity of not later than ninety (90) days from date of issue; or

(d) Banker's acceptances with a maturity of not later than ninety (90) days from the date of purchase thereof by the Escrow Agent.

4. The Escrow Agent shall be responsible for disbursing only the Escrow Funds plus such interests or income as the invested funds described in paragraphs 3 above will earn, less the fees or expenses described in paragraph 5, and no other interest or income may be collected from it.

5. For its services under this Escrow Agreement, the Escrow Agent shall be entitled to compensation for normal services in the amount of an acceptance fee of $2,500 plus a minimum escrow fee of $1,000 per year or part of a year. A fixed fee of $12.50 per check issued upon disbursement of the Escrow Funds also shall be charged to cover the costs of processing, issuance, and first class postage of each such check. For services in addition to normal services a reasonable fee shall be charged based upon the time spent by the Escrow Agent's officers, employees or agents in performing such additional services; the Escrow Agent also shall be reimbursed for all legal fees, out of pocket expenses, disbursements not covered above and advances incurred or made by the Escrow Agent in the performance of its services.

6. The Escrow Agent shall accumulate and reinvest (pursuant to the provisions of paragraph 3) the income from the investments set forth in paragraph 3 above (such income and investments herein collectively called the "Escrow Funds") and, subject to the other provisions of this agreement, shall disburse the Escrow Funds to such of the interstate customers of Tennessee in such amounts and in such manner as the Commission by future order shall direct. Upon receipt from the Commission or its delegate of a written direction of the Commission bearing the Commission's formal seal and stating that the order or orders comtemplated by this paragraph are final and no longer subject to further administrative recourse or judicial review, the Escrow Agent shall make the disbursements to the interstate customers of Tennessee as set forth in such order or orders.

7. Except with the express written consent of Sun, no part of the Escrow Funds shall be disbursed prior to the time when the Commission's Order of , 1982 in Docket No. IN79-3 becomes final without modification and is no longer subject to judicial review.

8. If the Commission's Order of , 1982 in Docket IN79-3 is reversed, vacated, or modified in any manner by any court or tribunal, then the Escrow Agent, upon written request from Sun, shall pay immediately the Escrow Funds to Sun or to any person or entity designated by Sun.

9. Commencing , 1982, the Escrow Agent shall provide Sun with quarterly reports setting forth the amount of the Escrow Funds, a description of the makeup of the Escrow Funds, and the expense charge for administering the account. Within one (1) month of any partial disbursement made pursuant to paragraph 7 above, the Escrow Agent shall provide Sun with a report describing the disbursement. Within two (2) months of the disbursement of all of, or the remainder of, the Escrow Funds pursuant to paragraph 7 above, the Escrow Agent shall provide Sun with a report chronicling the history of the Escrow Funds including all expenses charged for the Escrow Agent's services. Sun will provide copies of the reports received pursuant to this paragraph to the Commission.

10. The Escrow Agent's duties hereunder are ministerial only, and it undertakes to perform only such duties as are expressly set forth herein. The Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, except that which results from its own gross negligence or willful misconduct.

11. The Escrow Agent may rely and shall be fully protected in acting or refraining from acting upon any order, certificate, direction, communication, or other document furnished to it hereunder and which the Escrow Agent in good faith reasonably believes to be genuine and what it purports to be and to have been signed or presented by the proper party or parties.

12. The Escrow Agent shall not be liable or responsible for any act it may do or omit to do in good faith and reasonably believed by it to be authorized or within the rights and powers conferred by this Agreement, and may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

13. This Agreement is a personal one between the parties hereto and no assignment or attempted assignment of this Agreement or any interest hereunder by any party hereto shall be of any force or effect unless such assignment is expressly made subject to this Agreement, the assignee shall give its written consent to be bound to the terms of this written agreement as to assignee's share in any of the proceeds deposited hereunder, and the assignment is approved by both parties and the Commission (or its delegate).

14. No person, firm, corporation or other entity will be recognized by the Escrow Agent as a successor or personal representative of any party hereto until there shall be presented to the Escrow Agent evidence satisfactory to it of such succession.

15. At such time as all the terms and conditions of this agreement have been performed, including the final report required by paragraph 9 above, this Escrow Agreement shall terminate; provided, however, that if this Escrow Agreement is not terminated on or before December 31, 1985, or by such later date as Sun and the Escrow Agent shall have agreed to in writing, the Escrow Agent shall upon thirty (30) days' advance notice from Sun disburse the Escrow Funds, then remaining with the Escrow Agent, by bank cashier's check drawn to Sun (or by other means acceptable to Sun) and in such event shall notify both Sun and the Commission of such action and prepare the final report required by paragraph 9 whereupon all of the Escrow Agent's liabilities and obligations under or in connection with this Escrow Agreement shall terminate.

16. The Escrow Agent shall in no event be liable for any charge, fine, or other penalty associated with the withdrawal of part or all of the Escrow Funds prior to the maturity date of any time deposits made by Escrow Agent pursuant to paragraph (3) hereof.

17. The Escrow Agent is not a party to, nor is it bound by, nor need it give consideration to the terms or provisions of, even though it may have knowledge of (i) any agreement or undertaking which may be evidenced or disclosed by this Escrow Agreement; or (ii) any other agreements or undertakings that may now or in the future be delivered to the Escrow Agent in connection with this Escrow Agreement.

18. Neither Tennessee nor Tennessee's customers nor any other person or entity shall be a third-party beneficiary to, or have any other right or interest in, this Escrow Agreement. In the event that any reasonable question or dispute arises with respect to the proper interpretation of this Escrow Agreement or the duties of the Escrow Agent hereunder or the rights of the parties to this Escrow Agreement, the Escrow Agent shall

not be required to act and shall not be liable for refusal to act until the question or dispute is judicially settled (and the Escrow Agent may file a suit in interpleader for such purpose) by final judgment rendered by a court of competent jurisdiction binding on all parties interested in the matter, or settled by a written document in form and substance satisfactory to the Escrow Agent and executed by the signatories to this Escrow Agreement and binding upon all parties to this Escrow Agreement.

19. All notices and communications hereunder shall be in writing and shall be deemed to be duly given if sent by registered mail, return receipt requested as follows:

InterFirst Bank Dallas, N.A., Corporate Services Department, P.O. Box 83655, Dallas Texas 75283. Attention: Shirley Runnels.

Sun Exploration and Production Company P.O. Box 2880, Dallas, Texas 75221. Attention: Julius L. LyBrand.

or at such other address as any of the above may have furnished to the other parties in writing by registered mail, return receipt requested.

20. Any amendment or modification of this Agreement shall be effective when signed by the parties hereto and approved by order of the Commission or its authorized delegate.

In Witness Whereof, the parties hereto have executed this Escrow Agreement on this day of , 1982.

Sun Exploration and Production Company.

Title

InterFirst Bank Dallas, N.A.

Title

[FR Doc. 82-27979 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6628-000]

Waterfall Electric Co.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 6, 1982.

Take notice that on August 23, 1982, Waterfall Electric Company (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 No. 6628 would be located on Lake and Lost Creeks within Umatilla National Forest near the town of Granite in Grant County, Oregon. Correspondence with the Applicant should be directed to: Mr. Robert H. Campbell, Roberts and Shefelman, 800 Fifth Avenue, Suite 4100, Seattle, Washington 98104.

Project Description—The proposed project would consist of: (1) Two 5-foot-high diversion structures; (2) two 36-inch-diameter pipelines, one 1,000 feet long and the other 14,000 feet long, connecting with (3) a 30-inch-diameter, 9,500-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 2,500 kW, operating under a head of 1,020 feet; and (5) a transmission line tying into an existing C-P National line. The estimated average annual energy output is 6,200,000 kWh.

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 Oregon Department of Fish and Wildlife are requested, for the purposes set forth in Section 408 of the Act, to file 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 file with the Commission, on or before November 22, 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. Filing 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 Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 22, 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 "MOTION 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 motion 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. 82-27895 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2568-000]

Bibb Manufacturing Co., Porterdale Hydroelectric Associates, Inc.; Erratum Notice

October 5, 1982.

Notice of Application For Transfer of License (minor)

September 15, 1982.

The date for filing comments, protests or motions to intervene should be changed to November 1, 1982. The notice

was published at 47 FR 41415 (September 20, 1982).

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27896 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-842-000]

Connecticut Light and Power Co.; Filing

October 4, 1982.

The filing Company submits the following:

Take notice that on September 27, 1982, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Northfield Mountain Purchase Agreement between CL&P, the Hartford Electric Light Company (HELCO), Western Massachusetts Electric (WMECO), (the NU Companies) and the Braintree Electric Light Department (the Department) dated as of May 1, 1982.

CL&P states that the Purchase Agreement provides for a sale to the Department of specified percentages of capacity and related pondage from the NU Companies' Northfield Mountain Pumped Storage Hydro Electric Project (Project) together with related transmission service during the period May 1, 1982 through September 30, 1982.

CL&P further states that the capacity rate for the Project is a rate determined on a cost-of-service basis for the entire Project. The monthly transmission charge is equal to one-twelfth of the average annual cost of transmission service on the NU Companies' transmission system determined in accordance with Schedule B to the Purchase Agreement, multiplied by the number of kilowatts of winter capability which the Department is entitled to receive during each month. The station service charge is equal to the average cost of oil-fired generation on the system of the NU Companies for the prior month, multiplied by the Department's share of the Project's station service energy requirements.

CL&P requests an effective date of May 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 19, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27897 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6293-000]

Horseshoe Bar Associates, Inc.; Notice Suspending 120-Day Period for Action on Small Hydro Exemption

October 6, 1982.

Horseshoe Bar Associates, Inc. filed an exemption for the proposed Project No. 6293-000, located in Placer County, California. The application was filed pursuant to Section 408 of the Energy Security Act of 1981 and § 4.101 *et seq.* of the Commission's regulations.

Having determined that additional time is necessary for action on the application in order to insure full consideration of all information and comments that have been received, the 120-day period for Commission action is suspended pursuant to § 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27898 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6684-000]

Roland V. Matson; Exemption From Licensing

October 6, 1982.

A notice of exemption from licensing of a small hydroelectric project known as the Days Mill Project No. 6684, was filed on September 3, 1982, by Roland V. Matson. The proposed hydroelectric project would have an insulated capacity of 60 kW and would be located on the Kennebunk River, York County, Maine.

Pursuant to § 4.109(c) and 375.308(ss) of the Commission's regulations, and subject to the terms and conditions set forth in Section 4.111 of the Commission's regulations, the Director, Office of Electric Power Regulation, issues this notification that the above project is exempted from licensing as of October 3, 1982. Any terms and conditions specified in any agency letters of certification do not apply to this exemption.

Robert E. Cackowski,

Deputy Director, Office of Electric Power Regulation.

[FR Doc. 82-27899 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5676-003]

Lawrence J. McMurtrey; Suspending 120-Day Period for Action on Small Hydro Exemption

October 6, 1982.

Lawrence J. McMurtrey filed an Application for Exemption for the proposed Upper Silver Creek Project No. 5676, located on Upper Silver Creek in Snohomish County, Washington. The application was filed pursuant to Section 408 of the Energy Security Act of 1980 and Section 4.101 *et seq.* of the Commission's Regulations.

Having determined that additional time is necessary for action on the application in order to ensure full consideration of all information and comments that have been received, the 120-day period for Commission action is suspended pursuant to § 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27900 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-829-000]

Nantahala Power and Light Co.; Filing

October 4, 1982.

The filing Company submits the following:

Take notice that on September 23, 1982, Nantahala Power and Light Company (Nantahala) tendered for filing a Notice of Termination of the following Rate Schedules, Revisions, Supplements, and Notices of Concurrence filed by Nantahala will terminate by their terms on December 31, 1982, and thus are to be cancelled:

Rate schedule designation	Filing date
1. Nantahala Power and Light Company Rate Schedule FPC No. 1.	Sept. 30, 1966.
2. Certificate of Concurrence by Nantahala in the filing by Tapoco, Inc., on October 9, 1980, of the 1971, Nantahala-Tapoco Apportionment Agreement. Supplement 2 to Tapoco Federal Energy Regulatory Commission Rate Schedule No. 3.	Dec. 24, 1980.

Nantahala states that the New Fontana Agreement is a contract dated December 27, 1962, between Tennessee

Valley Authority (TVA), Tapoco, Inc. (Tapoco), and Nantahala. Aluminum Company of America (Alcoa), the parent company of Nantahala and Tapoco, is a signatory to the agreement. The agreement is a power coordination and exchange contract. It was entered into because the parties thereto each own hydroelectric plants on the watershed of the Little Tennessee River and its tributaries. It gives dispatching control and the output of the Nantahala plants under the agreement and the Tapoco plants to TVA in return for which TVA gives back to Nantahala and Tapoco jointly fixed power and energy entitlements based on average streamflow conditions.

Nantahala further states that the Entitlements jointly returned to Nantahala and Tapoco are divided by and between those companies in accordance with the 1971 Apportionment Agreement which is an October 9, 1980, filing of Tapoco, Inc., concurred in by Nantahala on December 24, 1980.

Both the New Fontana Agreement and the 1971 Apportionment Agreement by their terms expire December 31, 1982.

Copies of this filing have been served upon the Tennessee Valley Authority, Aluminum Company of America, Tapoco, Inc. and Nantahala's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 18, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27901 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC82-18-000]

Northern States Power Co. (Wisconsin); Filing

October 4, 1982.

The filing Company submits the following:

Take notice that on September 21, 1982, Northern States Power Company (Wisconsin) ("NSP-Wis") filed an application pursuant to Section 203 of the Federal Power Act for authority to purchase certain electric facilities from Dairyland Power Cooperative ("DPC"). Specifically, NSP-Wis seeks authority to purchase from DPC approximately 1.75 miles of transmission line and certain substation facilities, all of which facilities are located in Pierce and St. Croix Counties, Wisconsin and presently used by DPC to deliver electric energy to the municipal utility of River Falls, Wisconsin ("River Falls"). NSP-Wis and DPC have executed an agreement dated January 28, 1982 which provides for the sale and purchase of the facilities for $582,263.38 which is stated to be the depreciated original cost of the facilities. It is stated that the proposed purchase of facilities is an integral part of an overall project to substitute NSP-Wis at River Falls' wholesale power supplier. NSP-Wis further states that it has executed a wholesale service agreement (dated September 2, 1982) with River Falls which will enable River Falls to obtain a firm wholesale power supply from NSP-Wis in substitution for the interruptible service River Falls now receives from DPC, and to reduce its reliance upon costly imported oil.

NSP-Wis states that it and River Falls desire to commence the service as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 25, 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 motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27902 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER82-836-000]

Pacific Gas & Electric Co.; Filing

October 4, 1982.

The filing company submits the following:

Take notice that Pacific Gas and Electric Company (Pacific) on September 23, 1982 tendered for filing a contract dated June 24, 1982 entitled "Interruptible Transmission Service Contract Between Pacific Gas and Electric Company and Northern California Power Agency For Surplus Energy From The Turlock Irrigation District" (Contract).

The Contract provides that, to the extent that there is unused transmission capacity available on Pacific's system, Pacific shall offer to provide non-firm transmission service for Northern California Power Agency (NCPA) to purchase surplus energy from Turlock Irrigation District for certain NCPA member cities for the period from March 30, 1982 to June 30, 1982.

The rates for interruptible transmission service provided under the Contract, as negotiated and agreed by both parties, shall be 3.67 mills/kWh plus any applicable transmission energy losses. Such rates include services for the delivery of a portion of such surplus energy to certain member cities at distribution voltage.

Pacific respectfully requests, pursuant to § 35.11 of the Commission's Regulations, a waiver of the Commission's usual notice requirements so as to permit an effective date for the Contract of March 30, 1982. Pacific also requests, pursuant to § 35.13 a waiver of the notice requirements for the termination date for the Contract of June 30, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 18, 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 motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-27903 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6555-001]

John A. Webster, Jr.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 7, 1982.

Take notice that on September 27, 1982, John A. Webster, Jr., (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 exemptiuon of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6555 would be located on an unnamed seasonal stream near the town of Napa in Napa County, California. Correspondence with the Applicant should be directed to: Mr. John A. Webster, Jr., 6440 Wild Horse Valley Road, Napa, California 94558.

Project Description—The proposed project would consist of: (1) a 4-foot-high diversion structure; (2) a 3-inch-diameter, 800-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 2 kW, operating under a head of 100 feet; and (4) a 1,200-foot-long transmission line.

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. The power would be to Pacific Gas and Electric Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to file 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 file with the Commission, on or before November 26, 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. Filing 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 Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 26, 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 "MOTION 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 motion 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. 82-27904 Filed 10-8-82; 8:45 am]

BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–CA–329, to the Canada Centre for Inland Waters, one milligram of uranium–233 for use as tracers in Great Lakes radioecological studies.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-27854 Filed 10-8-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned

agreement involve approval of the following sale:

Contract No. S–CA–328, to Atomic Energy of Canada, Ltd., Chalk River, Ontario, 5 micrograms of plutonium-242, for use as a tracer in the analysis of low levels of plutonium in environmental samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–27855 Filed 10–8–82 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S–EU–748, to British Nuclear Fuels, Ltd., one gram of uranium containing 0.0002 grams of U-235, one gram of uranium containing 0.01 grams of U-235, and one gram of uranium enriched to 93.34% in U-235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–27853 Filed 10–8–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S–JA–322, to the Toshiba Research and Development Center, Japan, 100 grams of uranium, enriched to 90.2% in U-235, to be used as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–27852 Filed 10–8–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Proposed Subsequent Arrangements; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involves approval of the following sales:

Contract Number S–JA–324, to the Power Reactor and Nuclear Fuel Development Corp., Japan, 1,395 grams of uranium, containing 28.824 grams of U–235 (2.06% enrichment) for use as standard reference material.

Contract Number S–JA–326, to the Power Reactor and Nuclear Fuel Development Corp., Japan, 4 grams of uranium, enriched to 48.8% in U–235, and 104 grams of natural uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82–27857 Filed 10–8–82; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Peru

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Peru Concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the following retransfer: RTD/PE(EU)–1, from the Federal Republic of Germany to Peru, fuel elements containing 60 kilograms of uranium, enriched to approximately 19.9% in U–235, for use as research reactor fuel in the RP10, Lima, Peru.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-27858 Filed 10-8-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Sweden

Prusuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subseqent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangment to be carried out under the above mentioned agreement involves approval for the return of 50 kilograms of highly enriched research reactor fuel from the R-2 reactor in Sweden for reprocessing and storage at the DOE facility in Idaho.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. This arrangement for the return of U.S. origin highly enriched uranium (HEU) is consistent with U.S. non-proliferation policy in that it serves to reduce the amount of HEU abroad.

This subseqnet arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-27851 filed 10-8-82; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the following sale:

Contract Number S-SD-121, to Radium-Chemie, Ltd., Switzerland, of 60,000 curies of tritium gas, for use in the manufacture of luminous paint and tritium light sources.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 1, 1982.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 82-27856 Filed 10-8-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS—42016; TSH-FRL 2203-2]

Chlorendic Acid; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's recommendation that EPA require environmental effects testing of chlorendic acid under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not initiating rulemaking under section 4(a) to require environmental effects testing of chlorendic acid because the release of chlorendic acid to the environment is extremely limited.

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, DC 20460. Toll Free: (800-424-9065); in Washington, DC: (544-1404); outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601 *et seq.*) established an Interagency Testing Committee (ITC) to recommend a list of chemicals for EPA to consider for promulgation of testing rules under section 4(a) of the Act. The ITC May designate substances for priority consideration by EPA. TSCA requires EPA to respond within 12 months of the date a substance is designated for priority response by initiating rulemaking under section 4(a) or by publishing reasons in the **Federal Register** for not initiating rulemaking.

The ITC designated chlorendic acid (CA) for priority consideration in its Ninth Report, published in the **Federal Register** of February 5, 1982 (47 FR 5456), recommending that it be tested for the following environmental effects: Chemical fate, acute and chronic toxicity to fish and aquatic invertebrates, and toxicity to aquatic macrophytes and algae. The ITC's recommendations were based upon the reported industrial use of CA and its anhydride of approximately 7 million pounds a year in the U.S., supplied both from U.S. production and imports. In addition, the ITC report indicated that CA may be released to the environment during preparation of flame-resistant polymers, polyesters and pesticides and may enter the environment in the wastewater from flameproofing processes in the textile industry. Other factors included in the ITC's report were the possibilities that some highly chlorinated norbornene pesticides would degrade to CA in the soil and that CA would behave like certain highly chlorinated norbornene compounds that exhibit considerable resistance to degradation.

Chlorendic anhydride (CAN) is the manufacturing precursor of CA. Ca is produced by the hydrolysis of the anhydride. While Ca was the designated chemical in the Ninth Report, it became apparent that because CAN readily hydrolyzes to the acid in the aquatic environment, the anhydride should be included in the Agency's review.

This notice provides EPA's response to the ITC's designation of CA for testing.

II. Decision Not To Test

EPA has decided that section 4 testing of CA is not warranted at this time because release of CA and CAN to the environment is extremely limited. Furthermore, the available data indicate that such releases are unlikely to present an unreasonable risk.

There are only two manufacturers of CA/CAN in the U.S. CA is imported into the U.S. by Occidental Chemical Company and CAN is produced by Velsicol Chemical Corporation at one plant in Memphis, Tennessee.

Confidential business information submitted to EPA by Occidental and Velsicol, and reviewed by the Agency, showed that the amounts of CA and CAN being released to the environment are quite low and localized, and are well within applicable permit allowances. The Velsicol submission further

described the production of CAN and treatment of the wastes. Two of the three reported waste streams, accounting for nearly 50 percent of the total waste from the CAN manufacturing process, go to secure landfills. The other 50 percent of the waste goes to a high-efficiency thermal incinerator.

CAN is coproduced with hexachlorocyclopentadiene (HEX) at the Memphis plant. Because HEX wastes are controlled under the Resource Conservation and Recovery Act (RCRA), all CAN wastes, coproduced with HEX, are also controlled to HEX limits. HEX waste streams are listed as "hazardous wastes" under RCRA, 40 CFR Part 261. This means that HEX wastes, and coincidentally CAN wastes, are subject to the RCRA guidelines for thermal processing and land disposal of hazardous wastes.

CA/CAN can be used in the manufacturing of polyesters, polyester resins, epoxy resins for printed circuit boards and as intermediates in pesticide production. However, the major use for CA/CAN is the production of one unsaturated polyester resin, "Hetron®", manufactured by Ashland Chemical Company. About four million pounds of CA/CAN (95 percent of all production and importation) are used in this manufacturing process which is a closed system that chemically transforms the CA/CAN into the flame retardant unsaturated polyester resin. Losses of CA/CAN in the process are reported as negligible (Refs. 1 and 2).

In addition, the currently available data demonstrate that should CA or CAN reach the environment, they are not expected to bioconcentrate in aquatic species, nor bioaccumulate in the food chain (Ref. 3). Furthermore, available acute toxicity data on three aquatic species, two vertebrate and one invertebrate, show that CA has a very low order of toxicity to the test species (Ref. 4).

One of the ITC's reasons for including CA in its Ninth Report was because it was thought to be structurally similar to certain highly chlorinated pesticides such as chlordane, heptachlor, dieldrin and endrin. The Committee believed that CA might exhibit the same high level of toxicity to aquatic organisms as seen for those chemicals. However, the available data do not appear to support this hypothesis. For example, while CA has a 96-hour LC50 of 422 ppm on bluegill sunfish (Ref. 4), the above-named pesticides have a 96-hour LC50 ranging from 0.0006 ppm to 0.022 ppm on the same species (Ref. 5). Thus, the acute aquatic toxicity of CA to the test species has no similarities to the acute aquatic toxicity of the structurally-related, highly toxic pesticides. While EPA generally believes that structural similarity provides a basis for suspecting similarity in biological activity, in this case the available test data do not support such a concern.

Based on the information available, EPA has concluded that CA/CAN do not enter the environment in substantial quantities. In addition, an analysis of the data available on the substance, indicates that EPA would have no basis for finding that CA/CAN "may present an unreasonable risk to the environment." Therefore, EPA has decided that section 4 testing cannot be required at this time. If in the future any monitoring data compiled under RCRA or other data indicate an increase in release of or exposure to CA or CAN, this decision not to require testing may be reconsidered at that time.

III. Public Record

EPA has established a public record for this testing decision (docket number OPTS-42016) which is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Rm. E-107, 401 M St. SW., Washington, DC 20460. This record includes basic information considered by the Agency in developing this decision. The Agency will supplement the record with additional relevant information as it is received. The record includes the following information:

1. **Federal Register** notice containing the designation of chlorendic acid to the Priority List.

2. Contractor reports.

3. Communications (public, intra-agency, and interagency) consisting of memoranda and letters, contact reports of telephone conversations, meetings, public comments on the ITC report, published and unpublished data.

4. Confidential Business Information submissions by Occidental Chemical Co. and Velsicol Chemical Co. While part of the record, these submissions are not available for public review.

IV. References

1. Velsicol Chemical Co. letter by Carlson, S. E. to Cazzalino, D. L. (Enviro Control, Inc.), dated December 3, 1981.

2. Ashland Chemical Co. letter by Toeniskoetter, R. H. to Cazzalino, D. L. (Enviro Control, Inc.), dated August 13, 1981.

3. Veith, G. D. memo to G. W. Dickson, August 4, 1981.

4. Velsicol Chemical Co. Response to the Ninth ITC Report, March 8, 1982. Vol 1.

5. Ecological Effects of Pesticides on Non-Target Species, Office of Science and Technology, Executive Office of the President, 1971.

Dated: October 1, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-27908 Filed 10-8-82; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 82-695 and 82-696; File Nos. BP-810622AA and BP-810803AL]

West Georgia Broadcasting, Inc. and Radio Carrollton, Inc.; Hearing Designation Order

Adopted: September 20, 1982.

Released: September 30, 1982.

In the matter of applications of West Georgia Broadcasting, Inc., Carrollton, Georgia Req: 1100 kHz 1 kW, D (BC Docket No. 82-695, File No. BP-810622AA) and Radio Carrollton, Inc., WPPI, Carrollton, Georgia, Has: 1130 kHz, 500 W, D, Req: 1100 kHz, 1 kW, D, (BC Docket No. 82-696, File No. BP-810803AL) for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for the deleted facilities of station WLBB, Carrollton, Georgia.[1] West Georgia Broadcasting, Inc. is a new applicant who seeks to purchase the existing WLBB facilities, and Radio Carrollton, Inc., licensee of radio station WPPI, Carrollton, Georgia, requests the WLBB frequency while utilizing the WPPI facilities with some modifications.

2. We have no evidence that Radio Carrollton broadcast the local notice of the filing of its application as required by § 73.3580 of the Commission Rules. To remedy this deficiency it must broadcast notice, if it has not already done so, and file appropriate certification with the presiding Administrative Law Judge.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

4. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be

[1] The application of Faulkner Radio, Inc. for renewal of its license for station WLBB was denied by Memorandum Opinion and Order, *Radio Carrollton, et al.*, 69 FCC 2d 1139 (1978).

specified in a subsequent order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, that Radio Carrollton, Inc. shall broadcast notice of the filing of its application as discussed in paragraph 2 above, and shall file appropriate certification with the presiding Administrative Law Judge within 40 days after this order is published in the **Federal Register.**

6. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

7. It is further ordered, that pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rules, and shall advise the Commission of publication of the notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Larry D. Eads,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 82-27945 Filed 10-8-82; 8:45 am]

BILLING CODE 6712-01-M

Performance Review Board; Appointment of New Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Mark S. Fowler has appointed effective October 27, 1982 the following SES members to the Performance Review Board:

Laurence E. Harris, Chief, Broadcast Bureau

Jack D. Smith, Deputy Bureau Chief (Operations), Common Carrier Bureau

This announcement amends the announcement published September 24, 1982.

William J. Tricarico,

Secretary.

[FR Doc. 82-27948 Filed 10-8-82; 8:45am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 9902-14]

Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Energy and Environmental Impact has determined that the Commission's decision on Agreement No. 9902-14 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

The agreement is a joint service arrangement between Compagnie Generale Maritime and Hapag-Lloyd, Aktiengesellschaft and Intercontinental Transport (Proponents). Amendment 14 is designed principally to extend for a four-year period the rationalized liner service Proponents have for some years offered in the U.S. West Coast/Europe trade. The extension of the underlying agreement would involve no change in vessel or shore side operations. The only new feature involved in Amendment 14 authority for Proponents to offer a service between U.S. and Canadian West Coast ports. However, such service would involve no substantial change in present vessel or shoreside operations. Therefore, the Commission's action on this Amendment will have no significant impact on the environment or energy usage.

This Finding of No Significant Impact (FONSI) will become final within 20 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 547.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 82-27821 Filed 10-8-82; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 82-47; Agreement No. 10266]

Intercontinental Transport, B.V. and Compagnie Generale Maritime; Order to Show Cause

Agreement No. 10266-2 between Intercontinental Transport, B.V. (ICT) and Compagnie Generale Maritime (CGM) was conditionally approved by the Commission in its Order Partially Adopting Initial Decision issued in Docket No. 77-7; *Agreement Nos. 9929-2, et al. and Agreement Nos. 10266, et al.*, 21 F.M.C. 1030 (1979). In that Order the Commission concluded, *Inter alia*, that certain modifications, beyond those ordered by he Administrative Law Judge in his Initial Decision, were required before Agreement No. 10266-2 could by approved. Included among those modifications were: (1) A change in the title of the Agreement from "Joint Marketing Agreement" to "Joint Service Agreement;" and (2) a 800 TEU per week limitation on the carriage of containerized cargo. The parties to Agreement No. 10266-2 met all the conditions to approval within the prescribed time and the Agreement was approved on December 28, 1979.

Upon petition for review filed by Sea-Land Service, Inc., a protestant in Docket No. 77-7, the Court of Appeals for the District of Columbia Circuit held, *inter alia*, that the TEU limitation modification required by the Commission appeared to expend the scope of anticompetitive authority. *Sea-Land Service, Inc. v. F.M.C.*, 653 F.2d 544 (D.C. Cir. 1981). While recognizing the Commission's statutory authority to modify proposed agreements, the court determined that modifications which enlarge upon the anticompetitive authority contemplated by the parties to an agreement must be preceded by notice and hearing "through which interested parties can air their views as to the competitive implications of an agreement and the Commission can gain sufficient information to make a reasoned decision as to the competitive impact of that agreement." 653 F.2d 552. Because the court found the competitive consequence of the tonnage limitation impossible to assess on the record before it, the issue was remanded to the Commission for further hearings on the 800 TEU limitation. By Order served October 9, 1981, the Commission, in response to the court's remand, directed the parties to Docket No. 77-7 to address:

Whether Agreement No. 10266 should include a provision limiting the amount of containerized cargo which may be carried by ICT and CGM under the Agreement should Agreement No. 10374 be terminated, and, if so, the proper level of such a limitation. Proponents, United States Lines (USL), Sea-Land, Lykes Bros. Steamship Co., Inc. and the Commission's Bueau of Hearings and Field Operations (Hearing Counsel) filed comments in response to this Order.

Neither Proponents nor Sea-Land are content with the 800 TEU provision in

Agreement No. 10266. Both ask that the provision be deleted. Further, they agree that there is no evidentiary basis for the Commission to impose the 800 TEU provision. Although they reach the same result, there does remain a fundamental disagreement between them over the interpretation of Agreement No. 10266. Proponents argue that removal of the 800 TEU provision would give them unfettered authority to carry container cargo. Sea-Land also contends that the 800 TEU should be removed, but argues that this would leave Proponents with no authority to carry container cargo apart from Agreement 10374. Hearing Counsel contends that nothing in Agreement No. 10266, prior to the Commission's imposed modifications authorized the carriage of container cargo. Without taking an express position on the scope of Agreement No. 10266, USL and Lykes oppose any increase in the 800 TEU limitation.

Agreement No. 10374, which was approved at the same time Agreement No. 10266 was approved, authorizes a cross-charter container arrangement among Hapag-Lloyd A.G., ICT and CGM. In imposing the 800 TEU limitation in Agreement No. 10374 the Commission construed Agreement No. 10266, as amended, as giving Proponents the authority to carry container cargo in the absence of Agreement No. 10374. However, Proponents never suggested that they intended to offer containier service apart from Agreement No. 10374. The need for the authority was not an issue in the original hearings before the Commission. No evidence justifying the authority was proffered by Proponents. Indeed, as the court pointed out in *Sea-Land* v. *F.M.C., supra,* Proponents never even indicated that they were seeking such authority. It was on this basis that the Court concluded that there was insufficient evidence of record to support the Commission's contention that Agreement No. 10266 authorized the carriage of cargo and that the 800 TEU provision was, in fact, a limitation.[1] 652 F. 2d at 588.

The need for any TEU limitation in Agreement No. 10266, as amended, will depend on trade conditions existing at the time its parties intend to exercise the authority in Agreement No. 10266. Proponents have not disclosed any plans in this regard. In light of the D.C. Circuit's decision in *Sea-Land* v. *F.M.C., supra,* the Commission believes that it should not attempt again to formulate a limitation on the basis of trade conditions as they exist in the future. Instead, it appears that the authority, implicit or explicit, to carry container traffic should be removed from Agreement No. 10266, as amended, unless and until such time as Proponents can demonstrate "the actual existence or immediate probability of transportation circumstances in the trade covered by the agreement which warrant approval." *Agreement 8765 Order to Show Cause,* 9 F.M.C. 333, 335–6 (1966). The Commission could at that time also consider the need for, and size of, any limitation on the carrying authority granted.

Therefore, it is ordered, That, pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814, 821), Intercontinental Transport, B.V. and Compagnie Generale Maritime are ordered to show cause why Agreement No. 10266 should not be modified to clarify that it does not authorize the carriage of container cargo because such authority is not warranted by the actual existence or immediate probability of transportation need in the trade; and, if not so modified, why Agreement No. 10266–3 should not be found contrary to the public interest within the meaning of section 15 of the Shipping Act, 1916 and disapproved pursuant to that section;

It is further ordered, That Intercontinental Transport B.V. and Compagnie Generale Maritime be named Proponents in this proceeding;

It is further ordered, That Sea-Land Service, Inc., Lykes Bros. Steamship Co., Inc. and United States Lines, Inc. be named Protestants in this proceeding;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Bureau of Hearings and Field Operations shall be a party to this proceeding;

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memoranda of law and replies thereto pursuant to the following schedule:

By close of business November 19, 1982, affidavits of fact and memoranda of law shall be filed by Proponents and served upon all parties.

By close of business December 20, 1982, reply affidavits and memoranda shall be filed by Protestants and the Commission's Bureau of Hearings and Field Operations and served upon all parties.

By close of business December 30, 1982, all parties must file requests for evidentiary hearing and/or discovery, if desired, which requests must be accompanied by a statement setting forth in detail the facts to be proven or developed, their relevance to the issues in this proceeding and why such proof cannot be submitted through further affidavit.

Oral argument will be scheduled at a later date if requested and/or deemed necessary by the Commission.

It is further ordered, That notice of this Order be published in the **Federal Register** and that a copy thereof be served upon all parties;

It is further ordered, That persons other than those already parties to this proceeding who desire to become parties to this proceeding and to participate therein shall file a petition to intervene pursuant to Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72) no later than close of business October 29, 1982;

It is further ordered, That persons permitted to intervene in support of Proponents' position shall conform to the filing schedule assigned to Proponents; and, that persons permitted to intervene in opposition to Proponents' position shall conform to the filing schedule assigned to the Commission's Bureau of Hearings and Field Operations; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and fifteen copies as well as being mailed directly to all other parties of record.

By the Commission.[2]

Joseph C. Polking,

Assistant Secretary.

Commissioner Richard J. Daschbach, dissenting

This is yet another agonizing step in a case in which the Commission by a 3–2 vote (Commissioners Daschbach and Day dissenting) totally rewrote the presiding Administrative Law Judge's well-reasoned, and legally sound initial decision. Judge Stanley M. Levy's January 30, 1979 Order, to which no exceptions were filed, *inter alia,* embodied a compromise between the proponents and protestants of the relevant agreements.

The Commission majority's June 5, 1979 decision pursuing some nebulous and nonsensical theory of procedural and philosophical purity has resulted in over three torturous years of legal wrangling. For what purpose?

I dissent.

[FR Doc. 82–27906 Filed 10–8–82; 8:45 am]

BILLING CODE 6730–01–M

[1] Sea-Land argued before the court that the TEU capacity ceiling imposed by the Commission was not a "limitation" at all but rather a *grant* of authority to carry cargo not contemplated by Agreement No. 10266.

[2] Commissioner Richard J. Daschbach's dissent is attached.

[Docket No. 77-7; Agreement Nos. 9929-6, 10266-3, and 10374]

Order of Further Investigation and Hearing

Agreement No. 9929-5, which was the subject of the earlier investigation and hearing in this proceeding, had two distinct parts. Part I called for the joint operation of a LASH and conventional vessel service by Hapag-Lloyd, A.G. (Hapag-Lloyd), Intercontinental Transport B.V. (ICT) and Compagnie Generale Maritime (CGM) (Proponents). This service was to be known as "Combi Line." Part II of the Agreement would have authorized Proponents to cross-charter container space from one another on any and all vessels separately operated by them in the trade. Because Agreement No. 9929-5 did not adequately reflect the distinct activity proposed by Proponents, the Commission divided it into separate agreements. Part I, the Combi Line joint LASH service between Hapag-Lloyd and ICT became Agreement No. 9929-6; and Part II which authorized the cross-charter container arrangement among Hapag-Lloyd, ICT and CGM became Agreement No. 10374. The Commission's order approving Agreement No. 10374 authorized Hapag-Lloyd on the one hand ICT/CGM, on the other hand to exercise separate votes in any conference or rate agreement of which they might be members.

On review, the U.S. Court of Appeals for the District of Columbia Circuit found, *inter alia*, that the voting provision authorized by the Commission's order appeared to expand the scope of anticompetitive authority proposed by the Proponents. While recognizing the Commission's statutory authority to modify a proposed agreement, the court held that modifications which expend the anticompetitive authority contemplated by Proponents must be preceded by notice and opportunity for hearing. *Sea-Land Service, Inc. v. FMC*, 653 F.2d 544 (D.C. Cir. 1981). The court remanded the proceeding in part because the factual record with respect to voting did not adequately support the contention that multiple voting restricted the scope of Agreement No. 10374.

By Order served October 9, 1981, the Commission, in response to the court's remand, directed the parties to this proceeding to address:

> Whether, in light of its own structure and the structure of Agreement Nos. 9929-6 and 10266-3, Agreement No. 10374 should provide that Hapag Lloyd, on the one hand, and ICT/CGM, on the other hand, shall exercise separate votes in conferences or rate agreements with respect to their respective container services, and the impact on competition in the trades of such a provision. Submissions by the parties on this issue should include, if possible, a discussion as to how Hapag and ICT/CGM have voted on conference and rate agreement decisions regarding container services since Agreement No. 10374 was given final approval by the Commission on December 28, 1979; * * *.

Although the proceeding on remand was limited to the submission of affidavits of fact and memoranda of law on the impact of the voting provisions, the parties were given the opportunity to submit recommendations as to the necessity for further proceedings and form that they should take. After reviewing the submissions of the parties, the Commission has concluded that further evidentiary hearings are required.

The issue to be resolved with respect to voting is whether the members of Agreement No. 10374 have an identity of interest when measured against the guidelines established by the Commission in *Johnson Scanstar, Agreement No. 9973-3*, 21 F.M.C. 218 (1978). Whether the *Johnson Scanstar* factors exist here is primarily a factual dispute which cannot be resolved from the face of the documents submitted by the parties. Moreover, none of the submissions provide any probative evidence which would show whether the parties to Agreement No. 10374 have, in fact, engaged in bloc voting. Accordingly, a further hearing will be instituted on the voting issue.

Therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814, 821) an investigation is hereby instituted to determine whether Agreement 10374 should be modified to provide that the parties to that agreement can exercise only a single vote in any conference or rate agreement in the trades covered by Agreement No. 10374;

It is further ordered, That this matter be assigned to an Administrative Law Judge for public hearing and decision within the time limitations of Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61) at a date and place to be hereafter determined by the Administrative Law Judge. This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue otherwise requires an oral hearing and cross-examination for the development of an adequate record;

It is further ordered, That notice of this Order be published in the **Federal Register** and that a copy thereof be served upon all parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 502.72 of the Commission's Rules (46 CFR 502.72);

It is further ordered, That all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with § 502.118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118) as well as being mailed directly to all other parties of record.

By the Commission.[1]

Joseph C. Polking,

Assistant Secretary.

Commissioner Richard J. Daschbach, dissenting

This is yet another agonizing step in a case in which the Commission by a 3-2 vote (Commissioners Daschbach and Day dissenting) totally rewrote the presiding Administrative Law Judge's well-reasoned and legally sound initial decision. Judge Stanley M. Levy's January 30, 1979 Order, to which no exceptions were filed, *inter alia*, embodied a compromise between the proponents and protestants of the relevant agreements.

The Commission majority's June 5, 1979 decision pursuing some nebulous nonsensical theory of procedural and philosophical purity has resulted in over three torturous years of legal wrangling. For what purpose?

I dissent.

[FR Doc. 82-27905 Filed 10-8-82; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Work Group To Finalize the Guideline for Infection Control in Hospital Personnel; Open Meeting

On October 25 and 26, 1982, the Centers for Disease Control (CDC) will convene and open meeting of a work group to finalize the Guideline for Infection Control in Hospital Personnel to provide reasonable and practical

[1] Commissioner Richard J. Daschbach's dissent is attached.

guidance to hospitals in initiating or administering personnel health programs. The meeting is open to the public, limited only by space available.

The meeting is scheduled to begin at 8:30 a.m., in Room B–19, Building 3, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

For further information, please contact: Walter W. Williams, M.D., Hospital Infections Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: FTS: 236–3518, Commercial: 404/329–3518.

Dated: October 4, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82–27878 Filed 10–8–82; 8:45 am]

BILLING CODE 4160–18–M

Immunization Practices Advisory Committee, Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92–463 (5 U.S.C. Appendix I), the calendar year 1981 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

Immunization Practices Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287–6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245–6791).

Dated: October 1, 1982.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 82–27879 Filed 10–8–82; 8:45 am]

BILLING CODE 4160–18–M

Biochemical Indices of Male Reproductive Impairment; Compendium of Personal Hearing Protection Devices; Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Biochemical Indices of Male Reproductive Impairment

Date: October 20, 1982.

Time: 9:00 a.m.–12:30 p.m.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Room B38, Cincinnati, Ohio 45226.

Purpose: To review and discuss the utility of measuring serum levels of LDH–X as an indicator of chemically induced testicular damage.

Additional information may be obtained from: Harry B. Plotnick, Ph. D., Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway Cincinnati, Ohio 45226, Telephone: (513) 684–3496.

Compendium of Personal Hearing Protection Devices

Date: October 27, 1982.

Time: 9:00 a.m.–12:00 noon.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Auditorium, Cincinnati, Ohio 45226.

Purpose: To discuss general contents of compendium of personal hearing protection devices, and, in particular, the forms for listing manufacturers' hearing protector data. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Mr. Barry L. Lempert, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati Ohio 45226, Telephone: (513) 684–8281.

Dated: October 5, 1982.

William H. Foege, M.D.,

Director, Centers for Disease Control.

[FR Doc. 82–27877 Filed 10–8–82; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

Advisory Committee; Meeting; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration announced a public meeting of the Cardiovascular and Renal Drugs Advisory Committee to be held October 28 and 29. The notice of this meeting appeared in the **Federal Register** of Tuesday, September 21, 1982 (47 FR 41634).

FOR FURTHER INFORMATION CONTACT: Agnes Black, Federal Register Writer (HFC–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 25721 appearing in the **Federal Register** of Tuesday, September 21, 1982, the following correction is made on page 41635: Under the item "General Function of the Committee," "gastrointestinal disorders" is changed to read "cardiovascular and renal disorders."

Dated: October 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–27880 Filed 10–8–82; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1982:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: October 25–26, 1982, 9:00 a.m.

Place: Conference Room 7–23 on October 25, Conference Room K on October 26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open for entire meeting.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: The meeting will cover opening remarks and introduction of new members, discussions of the National Health Service Corps, the NHSC Scholarship Program, the Indian Health Scholarships, the designation process, the NHSC Provider Placement Plan for 1983, the Private Practice Option, and State Coordination Contracts.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contract Ms. Charlotte Walch, National Health Service Corps, Health Resources and Services Administration, Room 7–34, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443–5493.

Agenda items are subject to change as priorities dictate.

Dated: October 4, 1982.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 82–27865 Filed 10–18–82; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting, President's Cancer Panel

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, November 8, 1982, National Cancer Institute, Building 31, Conference Room 4, National Institutes of Health, Bethesda, Maryland 20205. The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items include reports by the Director, National Cancer Institute, and the Chairman, President's Cancer Panel. Attendance by the public will be limited to space available.

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 Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A35, National Institutes of Health, Bethesda, Maryland 20205 (301/496–1148) will furnish substantive program information.

Dated: October 5, 1982.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 82–27831 Filed 10–8–82; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service National Toxicology Program; Chemicals (16) Nominated for Toxicological Testing: Request for Comments

SUMMARY: On July 15, 1982, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review 16 chemicals nominated for toxicological testing and to recommend the types of testing to be performed. CEC evaluation of nominated chemicals is an integral part of the NTP chemical nomination and selection process. With this notice, the NTP solicits public comment on the 16 chemicals listed herein.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS, CONTACT: Jackson Schad, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program (NTP), nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register** and *NTP Technical Bulletin*. This enables outside individuals and groups to participate in the NTP evaluation process thereby helping the NTP to make better informed decisions as to whether to select, reject, or defer chemicals for testing.

Relevant comments and data submitted in response to this request are reviewed and summarized by NTP technical staff and then forwarded to the NTP Board of Scientific Counselors for its evaluation of the nominated chemicals and to the NTP Executive Committee for its decision making about testing. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP fiscal year 1982 Annual Plan, pages 137–319.

On July 15, 1982, the CEC evaluated 16 chemicals nominated to the NTP for toxicological testing. The table below lists each chemical, its Chemical Abstracts Service (CAS) registry number, and the types of testing recommended by the CEC.

Chemical	CAS No.	Committee Recommendation
1. (4,4'-Bithiazole)-2,2'-diamine	58139–59–6	*Salmonella* assay.
2. Butyl benzyl phthalate	85–68–7	Reproductive effects. Neurotoxicity. Carcinogencity, including other chronic effects (rats only) (See below).
3. C.I. Basic Red 29	42373–04–6	*Salmonella* assay. *In vitro* cytogenetics. Cell transformation studies. Chemical analysis.
4. Cromolyn sodium	15826–37–6	No testing.
5. 5,6-Dichloro-2-benzothiazolamine	24072–75–1	*Salmonella* assay. Mouse lymphoma assay. Carcinogenicity.
6. N,N-Diethyl-4-((5-nitro-2-thiazolyl)azo)benzenamine	54289–46–2	*Salmonella* assay. Mouse lymphoma assay.
7. D-Fructose	57–48–7	No testing.
8. 2-Mercapto-4-methyl-5-thiazolyl methyl ketone	7725–93–1	*Salmonella* assay.
9. 6-Methoxy-2-benzothiazolamine	1747–60–0	Carcinogenicity.
10. 4-(6-Methyl-2-benzothiazolyl)benzenamine	92–36–4	*Salmonella* assay. Mouse lymphoma assay. *In vitro* cytogenetics. Subchronic testing.
11. 3-Methyl-5-isothiazolamine	24340–79–9	*Salmonella* assay. *In vitro* cytogenetics.
12. 2-Octyl-3-isothiazolone	26530–20–1	*Salmonella* assay. Mouse lymphoma assay.
13. 5-Phenyl-2,4-diaminothiazole	490–55–1	No testing.
14. Thiabendazole	148–79–8 28558–32–9	No additional testing. (See below.)
15. 2-Thiazolamine	96–50–4	*Salmonella* assay. *In vitro* cytogenetics.
16. Thiazole	288–47–1	No additional testing. (See below.)

The NTP previously selected two of the 16 nominated chemicals for short-term mutagenicity testing, namely thiazole for testing in the *Salmonella* assay and thiabendazole for testing in the *Salmonella* and aneuploidy assays. Butyl benzyl phthalate was previously tested by the NTP for carcinogenicity, yielding negative results in mice of both sexes and equivocal results in female rats. The study was judged to be inadequate in male rats because of early mortality. The chemical was negative in the *Salmonella* assay and for chromosomal aberations and sister chromatid exchanges in Chinese hamster ovary cells when tested by the NTP. Butyl bezyl phthalate has been selected by the NTP for testing in *Drosophila*. Additional toxicological studies of butyl benzyl phthalate have been scheduled in male F344 rats, namely a dermal absorption study, a six-month feeding study and dose dependent chemical disposition and metabolism studies. Following a complete analysis of the results of these studies, a carcinogenicity bioassay will be designed and initiated. This research was developed as part of the NTP testing initiative on phthalates.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Completed, ongoing and/or planned toxicological testing in the private sector including detailed experimental protocols and, in the case of completed studies, resultant data.

(2) Modes of production, present production levels, and occupational exposure potential.

(3) Uses and resulting exposure levels, where known.

(4) Results of toxicological studies for structurally related compounds.

Please submit all information in writing by (thirty days after date of publication). Any submissions received

after the above date will be accepted and utilized where possible.

Dated: October 6, 1982.

David P. Rall, M.D.,

Director, National Toxicology Program.

[FR Doc. 82-27830 Filed 10-8-82; 8:45 am]

BILLING CODE 4140-01-M

Privacy Act of 1974; Proposed Major Alterations to an Existing System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed major alterations to an existing Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice proposing major alterations in the Privacy Act system of records entitled "Grants: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowships, Clinical Training, Community Services, Cooperative Agreements," HHS/ADAMHA/OA, 09-30-0027. The system contains the official documentation of the grant programs of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The proposed alterations are necessary to ensure compliance with recently added provisions in the Public Health Service Act (PHSA), Section 303 (42 U.S.C 242a), concerning clinical training awardees' payback obligations.

PHS invites interested persons to submit comments on the proposed alterations on or before November 12, 1982.

In the interest of efficiency, we are also updating the Routine Uses and Safeguards sections of the system notice, as well as, correcting an erroneous authority citation. The nature of these changes, however, does not require public comment.

DATES: PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on September 30, 1982. The revision(s) to the system will be effective 60 days from the date submitted to OMB unless PHS receives comments on the revision(s) which would result in a contrary determination.

ADDRESS: Gerry Elder, Privacy Act Officer, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12C-26, Rockville, Maryland 20857.

The public may inspect comments that we receive, at the above address, 8:30 a.m. to 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Privacy Act Officer as above; telephone (301) 443-4543.

SUPPLEMENTARY INFORMATION: Effective October 7, 1980, the Mental Health Systems Act (Pub. L. 96-398), Section 803, amended 42 U.S.C. 242a to require recipients of clinical training awards to repay their training support. Generally, payback is in the form of service: One year of appropriate service for each year of training support. The procedure is similar to one that is already well-established for recipients of research training support under the National Research Service Awards (NRSA) Program (42 U.S.C. 2891-1). The rules for payback for clinical training support, 42 CFR Part 64a, are similar to those for the NRSA Program. This system of records, 09-30-0027, as currently constituted and described in a system notice published in the **Federal Register** October 27, 1981 (46 FR 52772-52774), maintains communication with NRSA awardees. The purpose of the proposed alteration is to permit ADAMHA to maintain communication with clinical training awardees as well as with research training awardees, to monitor activities and progress in fulfilling their payback obligations. This system alteration affects records in the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and in the National Institute of Mental Health (NIMH), both of which are components of ADAMHA.

All of the physical protections, manual and computer access safeguards, and personnel restrictions listed in the current system notice will apply to clinical training awardee records also. The records to be maintained under this system alteration will facilitate administration of the payback system which significantly benefits the public treasury. Therefore, the benefits of the payback-through-service requirement outweigh the minimal, if any, threat to any individual's privacy resulting from the maintenance of these records.

We are making several editorial changes to, and deletions of, routine uses for purposes of clarification, as follows:

1. We are updating a routine use which permits disclosure to the Smithsonian Science Information Exchange, Inc. This routine use now reads as follows:

> Referrals may be made of assignments of research investigators and project monitors on specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange.

2. We are deleting a routine use for research which was inserted in error in 1980.

3. We are deleting a routine use pertaining to Freedom of Information disclosure because such disclosure was deemed unwarranted.

4. We are consolidating three overlapping routine uses to make the nature of the actual disclosure clearer. This combined routine use now reads as follows:

> Disclosure may be made to ADAMHA contractors for the purpose of carrying out quality assessment, program evaluation and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

Finally, we are correcting an erroneous authority citation concerning the National Institute on Drug Abuse, also a component of ADAMHA. We are including the complete citation for the Drug Abuse Prevention, Treatment and Rehabilitation Act. At the same time, we are reordering the authority citation for the NIAAA as well as for the NIMH.

The nature of the foregoing editorial changes does not require a public comment period. Following this preamble, we are republishing the system notice in its entirety to reflect the proposed alterations.

Dated: October 1, 1982.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Notice of an Altered System of Records

09-30-0027

SYSTEM NAME:

Grants: Research, Research Training, Research Scientist Development, Education Demonstration, Fellowships, Clinical Training, Community Services, Cooperative Agreements, HHS/ADAMHA/OA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Institute on Drug Abuse, Grants Management Branch, Room 9A-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; National Institute on Alcohol Abuse and Alcoholism, Grants Management Branch, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; National Institute of Mental Health, Grants Management Branch, OPS, Room 7C-02, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal investigators, program directors, trainees, fellows, research scientist development awardees and other employees of applicant or grantee institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grant and cooperative agreement applications and review history including curriculum vitae, salary information, summary of review committee deliberations and supporting documents, progress reports, financial records, payback records of research training awardees (i.e., recipients under the National Research Service Awards Program), and payback records of clinical training awardees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 301 (42 U.S.C. 241) Public Health Service Act, Section 410, Drug Abuse Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 1177), Section 301 (42 U.S.C. 241) and Section 303 (42 U.S.C. 242a); Public Health Service Act, Sections 101, 311, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, (42 U.S.C. 4591), Sections 301, 303, 433(a), 455, and 472(a)(1)(a), Public Health Service Act, (42 U.S.C. 241, 242a, 289C, 289k–1 and 289l–1), and Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.).

PURPOSE(S):

Records are maintained as official documentation relevant to the review, award, and administration of grant programs. Specifically, records are: (1) Used by staff program and management specialists for purposes of awarding and monitoring grant funds, (2) used to maintain communication with former trainees/fellows who have incurred an obligation for research training under the National Research Service Awards Program (42 U.S.C. 298l–1) or for clinical training (42 U.S.C. 242a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Referrals may be made of assignments of research investigators and project monitors on specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange.

2. Disclosure may be made to qualified experts not within the definition of Department employees for opinion during the application review process.

3. Disclosure may be made to ADAMHA contractors for the purpose of carrying out quality assessment, program evaluation, and management reviews. Contractors are required to maintain Privacy Act safeguards with respect to the records.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice) or state (e.g., the State's Attorney's Office), charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto for litigation.

5. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal Agencies' records such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

7. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

8. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal Agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Noncomputerized documents are filed in folders in enclosed file cabinets and open shelves. Information is on 3x5 cards in file cabinets. Computerized records exist in tape and disk form.

RETRIEVABILITY:

By grant number and cross-indexed by name.

SAFEGUARDS:

Personnel authorized to have access to the files are limited to: The chief of the Grants Management Branch and staff authorized by him/her: Grants specialists, grants technicians, program officials, assigned computer personnel and possible contractor staff including the project director and research associates. Computerized records are password protected; passwords are changed from time to time. Contractors working on computerized records are given passwords to access data only on a need-to-know basis. Computerized records are maintained in a secured area. During normal work hours, this area is staffed by authorized personnel who must show identification for entry. At other times, the computer area is locked. Hard copy files are stored in rooms which are locked at night. There is 24-hour guard patrol in the building. These safeguards are in accordance with DHHS Chapter 45–13, and Supplementary Chapter PHS.hf: 45–13 in the General Administration Manual, and Part 6, "ADP System Security" in the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the ADAMHA records control schedule. The records control schedule and disposal standard for these records may be obtained by writing to the appropriate system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

National Institute on Drug Abuse, Chief, Grants Management Branch, OPS, Room 9A05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute on Alcohol Abuse and Alcoholism, Chief, Grants Management Branch, Room 16–86, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

National Institute of Mental Health, Chief, Grants Management Branch, Room 7C–02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the appropriate system manager at the above address. Verifiable proof of identity is required.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requesters should also reasonably specify the record contents being sought, and should provide the official grant number when possible.

CONTESTING RECORD PROCEDURES:

Contact the appropriate system manager at the address specified above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Applicants, grantees, fellows, trainees, personnel at grantee institution on whom the record is maintained, Federal advisory committees, site visitors, consultants, references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 82–28013 Filed 10–8–82; 8:45am]

BILLING CODE 4160–20–M

Office of the Secretary

Statement of Organization, functions, and Delegation of Authority; Correction Notice

AGENCY: Office of the Secretary, Office of the Deputy Assistant Secretary for Equal Employment Opportunity, OS, DAS/EEO, HHS.

ACTION: Correction of Statement of Organization, Functions and Delegations of Authority.

SUMMARY: This document corrects a typographical error made in regulations published in the **Federal Register** on June 15, 1982. These regulations implemented the Reorganization of the Office of the Deputy Assistant Secretary for Equal Employment Opportunity.

FOR FURTHER INFORMATION CONTACT: David Shorts (202) 245–6723.

SUPPLEMENTARY INFORMATION: On June 15, 1982, we published regulations in the **Federal Register**, to implement the reorganization of the Office of the Deputy Assistant Secretary for Equal Employment Opportunity. This document contains a typographical error that resulted in citing an incorrect section of the Civil Service Reform Act. (CSRA).

1. FR Doc. 82–16062, "Office of the Deputy Assistant Secretary for Equal Employment Opportunity; Statement of Organization, Functions, and Delegations of Authority," appearing at 47 FR 25773, is corrected as follows:

a. On page 25774, column 1, under AHE.00 mission, lines 17 and 18, "Section 301 of the Civil Service Reform Act of 1978" is corrected to read "section 310 of the Service Reform Act of 1978."

Approved: October 4, 1982.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 82–27850 Filed 10–8–82; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W–75437]

Conveyance Noncompetitive Sale of Public Land in Lincoln County, Wyo.

September 24, 1982.

Notice is hereby given that pursuant to Section 203 of the Act of October 21, 1976; 43 U.S.C. 1713 (1976), The Pittsburg & Midway Coal Mining Co. has purchased, by noncompetitive sale, and received a patent for public land in Lincoln County, Wyoming described as:

Sixth Principal Meridian

T. 21 N., R. 116 W.,
Sec. 15, lots 1, 2, 3, and 4.
Aggregating 16.34 acres.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 82–27861 Filed 10–8–82; 8:45 am]

BILLING CODE 4310–84–M

Federal-State Coal Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board will be meeting in Denver, Colorado, on November 16, 1982. The public is welcome to attend. Major purposes of the meeting are to (1) review the proposed revisions to the board's charter, (2) be briefed on the results of a social impact assessment contract, (3) review the new coal policy and procedures as set forth in the new regulations at 43 CFR Part 3400 and 30 CFR Part 211, and (4) make a recommendation on the procedures to be used for setting regional leasing levels.

DATE: The advisory board will meet at 8:00 a.m., on November 16, 1982.

ADDRESS: The meeting will be held at the Executive Tower Inn, 1405 Curtis Street, Denver, Colorado 80202, telephone (303) 571–0300.

FOR FURTHER INFORMATION CONTACT: Monte Jordan or Myra Musialkiewicz, Division of Coal, Tar Sand, and Oil Shale, Bureau of Land Management (540), 18th and C Streets, N.W., Washington, D.C. 20240, telephone (202/FTS 343–4636).

SUPPLEMENTARY INFORMATION: The Federal-State Coal Advisory Board is chartered under the Federal Advisory Committee Act and advises the Secretary and Director on certain aspects of the Federal coal management and Federal oil shale leasing programs.

The advisory board, which is required to convene at least once each year, will meet on November 16, 1982, to (1) review the proposed revisions to the board's charter and regional coal team MOU's, (2) be briefed on the results of a coal-related social impact assessment contract, (3) review the new coal policy and procedures as set forth in the new regulations at 43 CFR Part 3400 (47 FR 33114, July 30, 1982) and 30 CFR Part 211 (47 FR 33154, July 30, 1982). The agenda for the meeting is attached as Appendix A.

The public will have the opportunity to address the board during the afternoon of the meeting. Those wishing to speak during the public comment period will be asked to so indicate at the meeting.

Written copies of a speaker's remarks would be appreciated. All comments will become part of the permanent record of the advisory board meeting. The chairperson may impose a time limit to ensure that all those wishing to address the board are heard.

Dated: September 29, 1982

James M. Parker,

Acting Director, Bureau of Land Management.

Agenda—Federal-State Coal Advisory Board meeting

November 16, 1982

8:00 a.m.: Welcome, Introductions, and Opening Remarks
BLM Director
Deputy Director for Energy and Mineral Resources
Board Members
8:30 a.m.: Review and Approval of Meeting Agenda
8:35 a.m.: Approval of 1981 Meeting Minutes
8:40 a.m.: Status Report on Past Recommendation
Written report to be distributed prior to meeting
Chair to entertain questions on report
9:10 a.m.: Status of Regional Activity
RCT Chairpersons
9:30 a.m.: Advisory Board Charter and MOU Revisions
Board action requested
10:15 a.m.: Break
10:30 a.m.: Regulatory Review
Coal Management (43 CFR 3400)
Coal Exploration and Mining Operation (30 CFR 211)
11:30 a.m.: Social Impact Assessment Contract Briefing
12:00 a.m.: Lunch
1:30 p.m.: Leasing Level Procedures Presentation
Green River-Hams Ford RCT Report
Southern Appalachian RCT Report
2:30 p.m.: Public Comment Period
3:15 p.m.: Break
3:30 p.m.: Recommendations/Discussion
5:00 p.m.: Adjourn

[FR Doc. 82-27860 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 31866, Survey Group 111]

Wisconsin; Filing of Plat of Survey

1. On July 12, 1982, the plat representing the dependent resurvey of a portion of the West and North boundaries, a portion of the subdivisional lines, and the reestablishment of a portion of the record meander lines to include lands omitted from the original survey in Secs. 5 and 6, T. 37 N., R. 9 E., Fourth Principal Meridian, Wisconsin, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on (90 days from date of publication).

The lands listed below described the lands omitted from the original survey.

Fourth Principal Meridian, Wisconsin

T. 37 N., R. 9 E.,

Sec. 5, Lot Nos. 5 and 6;
Sec. 6, Lot 5.

2. The greater portion of the omitted land in Secs. 5 and 6, is of a rolling nature, rising approximately 20 feet above the ordinary high water mark of Netties Lake. Timber consists of maple, birch, aspen, basswood, ash, balsam fir, pine, hemlock, spruce, and tamarack. There are many large pine stumps in the omitted areas which are well over 120 years old. The soil composition consists of a well drained loamy sand on the upland areas and poorly drained organic material in the swampy areas.

3. The areas described above were found to be over 50 percent upland in character within the purview of the Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. All inquiries relating to these lands should be sent to the Chief, Division of Lands and Minerals Operations, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before January 6, 1983.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-27875 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Minerals Management Service Proposed Method for Exchanging Oil Shale Lands

The following method for exchanging Federal oil shale lands with State or private oil shale lands is published for public comment. This method is under consideration for use in conjunction with the Bureau of Land Management proposed regulatory changes in 43 CFR 2201.3. Comments should be received no more than 60 days after publication of this notice. Comments should be sent to the Associate Director for Onshore Minerals Operations, Minerals Management Service, 12203 Sunrise Valley Drive, National Center, Mail Stop 650, Reston, Virginia 22091. For further information, contact Mr. Erick V. Kaarlela, Chief, Branch of Mineral Transactions, Resource Evaluation Division, Minerals Management Service, 12203 Sunrise Valley Drive, National Center, Mail Stop 653, Reston, Virginia 22091.

Section 206(b) of FLPMA provides "* * * the values of the lands exchanged by the Secretary * * * shall be equal * * *". Since oil shale has been mined and processed only on a limited basis, little data exists concerning overall cost or market values associated with the industry. It has therefore been decided that the procedure used to evaluate and exchange should minimize the usage of economic and market data and concentrate as much as possible on the characteristics of the resource itself.

In order to do this, we propose that the exchange evaluation be made on the basis of resource-equivalent for resource-equivalent, defined as equivalent tons of raw shale available for further processing adjusted for differences in mining costs and grade.

Three major factors for consideration are the quantity of recoverable oil shale, the quality of the raw oil shale (grade), and differences in geologic and engineering characteristics that would have a significant effect on mining costs for the selected and the offered lands. In addition, the value of oil shale will be affected by the value of shale oil and its extraction costs. To ensure an equitable exchange of resource for resource, the following steps are required:

1. Estimate the Resource Base

Calculate the quantity of in-place resource for each tract (using 25 feet thickness of shale beds averaging at least 25 gallons per ton as the minimum cutoff). All available information such as drill hole and geophysical data shall be considered.

2. Estimate the Reserves within the Mining Zones

Select mining zone based on stratigraphic and geologic controls as well as the selected method of mining. Calculate the quantity and quality of reserves contained within the zones.

3. Calculate the Recoverable Reserves

Recoverable reserves will be calculated for each property with consideration given to such parameters as mining method, depth to mining zone, thickness of mining zone, principles of rock mechanics, etc. The final decision as to which mining method will be selected for purposes of estimating reserves and mining costs rests with the Secretary and takes into consideration those factors that a prudent man would take into account in selecting that mining method which would achieve the most profitable mining operation.

4. Estimate Mining Costs for Each Property

Mining costs (capital and operating) will be estimated for each property based on the mining method selected in Step 3. Costs will be calculated using the best published and unpublished information available, updated to reflect current costs. The mining report should

state the average grade on the offered and selected tracts. An average depth must be determined. This is a resource for resource valuation; therefore, severance taxes, royalty, State and Federal income taxes, and production subsidies will not be considered, unless significant and calculative differences exist.

Mining costs can be caluclated from the Straam Engineers' report, *Capital and Cost Estimating System Handbook—Mining, Retorting, and Upgrading of Oil Shale in Colorado, Utah, and Wyoming.*

Mining costs pre ton calculated from the Straam report must be adjusted to current dollars and further adjusted by factors contained in a report by the Rand Corporation entitled *Understanding Costs Growth and Performance Shortfalls in Pioneer Process Plants.* Both offered and selected properties should be evaluated for an operation producing either equal tonnages of oil shale or equal recoverable shale oil, but the former is preferred.

5. Adjusted Value of Raw Oil Shale and Associated Minerals

The value of the raw shale at the surface prior to retorting can be determined from a report entitled *An Estimation Technique for the Evaluation of Oil Shale Royalty Rates* prepared by the Shale Royalty Task Force and dated April 1982. In this report, costs for retorting and upgrading raw oil shale were calculated using the report prepared by Straam Engineers. These costs were updated from 1976 to 1981 and then adjusted to reflect the uncertainty involved with estimating costs for a new technology. This was accomplished using data supplied in a report recently published by the Rand Corporation entitled *Understanding Costs Growth and Performance Shortfalls in Pioneer Process Plants.* The estimation of costs for retorting and upgrading has a major impact in determining the exchange factor even if the grade of the selected and offered lands are the same. The adjusted costs of retorting and upgrading were deducted from the average value of domestic crude to give the value of one ton of raw oil shale prior to retorting. An average value of $6.50/ton for 30 ga/ton grade or 21.7 cents per gallon of contained shale oil was determined from this report and should be used until such time as more accurate information is available. For oil shale of higher (lower) grade, the value per gallon will increase (decrease) somewhat. The value of associated minerals such as sodium will also be considered as appropriate.

6. Calculate the Exchange Factor

The exchange factor on a per ton basis is calculated as follows:

$$\text{Factor} = \frac{\text{(Selected lands) Value of Raw Shale} - \text{Mining Costs}}{\text{(Offered lands) Value of Raw Shale} - \text{Mining Costs}}$$

The per ton value of the oil shale at the surface is determined in Step 5 and the mining costs in Step 4. If the exchange ratio were, for example, 1.2 then for exchange purposes the offered lands should contain 1.2 times the recoverable tons of oil shale as the selected lands.

7. Adjust the Acreage

Adjust the acreage of the selected and/or offered lands so that the exchange factor becomes one and monetary payments are not required by either party.

Dated: October 6, 1982.

Andrew V. Bailey,

Acting Associate Director for Onshore Minerals Operations.

[FR Doc. 82-27953 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0249, Block 76, Vermilion Area, offshore Louisiana.

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 the revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 4, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-27876 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 2041, Block 257, East Cameron Area, offshore Louisiana.

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: September 27, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-27862 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Reclamation

Grand Mesa Project, Colorado; Intent To Prepare an Environmental Impact Statement: Withdrawal

On August 30, 1979, the Bureau of Reclamation (known at that time as the Water and Power Resources Services) published a Notice of Intent to Prepare an Environmental Impact Statement on the Grand Mesa Project, Colorado. This notice appeared in Volume 44, No. 170, Page 50924 of the **Federal Register.**

The project purpose was to determine the feasibility of developing streams tributary to the Gunnison River and its north fork primarily for irrigation and also for municipal and industrial water, fish and wildlife benefits, and possible flood control. Changes in benefit computation criteria and increased construction costs, however, rendered all identified alternatives economically unjustifiable and the study was terminated and a report documenting the findings of the study was released to the public on July 13, 1982. Since the study was terminated we are withdrawing the Notice of Intent and do not plan to prepare an environmental statement.

Dated: October 4, 1982.

Bob Broadbent,

Commissioner of Reclamation.

[FR Doc. 82-27819 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-09-M

West Divide Project, Colorado; Intent To Prepare an Environmental Impact Statement: Withdrawal

On October 12, 1979, the Bureau of Reclamation (known at that time as the Water and Power Resources Services) published a Notice of Intent to Prepare an Environmental Impact Statement on the West Divide Project, Colorado. This notice appeared in Volume 44, No. 199, Page 58976 of the **Federal Register.**

The project was planned to provide water for municipal and industrial use and would also have provided for fish, wildlife, and recreation enhancement; however, the project economic analysis indicated the plan did not meet current criteria for an economically justified project and further study was terminated, and a report documenting the findings of the study was released to the public on July 14, 1982. Since further study has been terminated we are withdrawing the Notice of Intent and do not plan to prepare an environmental statement.

Dated: October 4, 1982.

Bob Broadbent,

Commissioner of Reclamation.

[FR Doc. 82-27820 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers Finance Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: October 5, 1982.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

MC-F-14960, filed September 27, 1982. Lewis B. Guignard (Guignard) (P.O. Box 26067, Charlotte, NC 28213)—Continuance in Control—L.B. Guignard, Inc. (LBG) (P.O. Box 26067, Charlotte, NC 28213). Representative: Charles Ephraim, 406 World Center Building, 918 16th Street, N.W., Washington, D.C. 20006. Guignard seeks authority to continue in control of LBG upon the LBG's institution of operations, in interstate or foreign commerce, as a motor contract carrier. Guignard presently controls Guignard Freight Line, Inc., which is a motor common carrier pursuant to a certificate issued in Docket No. MC-45736 and subnumbers which authorize the transportation of general and specified commodities, over irregular routes in AL, AR, DE, FL, GA, IN, KY, LA, MD, MI, MS, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VA, WV.

and DC. LBG has filed an initial application in No. MC–163496 for authority as a contract carrier to transport general commodities, over irregular routes between points in the U.S. (except AK and HI) under a continuing contract with Quaker State Oil Refining Corp. LBG's application was published in the **Federal Register** on September 7, 1982. As a condition to a grant of that authority, Guignard was required to file this continuance in control application or submit an affidavit indicating why the application is unnecessary.

[FR Doc. 82–27838 Filed 10–8–82; 8:45 am]
BILLING CODE 7035–01–M

Motor Carrier; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC–FC–79947. By supplemental decision of September 28, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to JIM HEILIG TRUCK LINES, INC. a portion of Certificate No. MC–57778 (Sub-No. 38X) issued November 19, 1981, to MICHIGAN REFRIGERATED TRUCKING SERVICE, INC., authorizing the transportation of *food and related products* over irregular routes (1) between points in Oakland, Macomb, St. Clair, Lapeer, Saginaw, and Sanilac Counties, MI, Sussex County, DE and Washington County, MS, on the one hand, and, on the other, points in IA, IL, IN, KY, KS, MN, MO, ND, NE, NY, OH, OK, PA, RI, SC, SD, TX, VA, WI, WV and the District of Columbia, and (2) between points in the United States in and east of CO, MT, NM and WY restricted to shipments originating at or destined to facilities of Vlasic Foods, Inc. Representative: Alex J. Miller, 555 S. Woodward Ave., Suite 512, Birmingham, MI 48011.

MC–FC–80042. By decision of September 30, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the lease for a period of 1 year by P & H TRANSPORTATION, INC., of Houston, TX, of Certificate No. MC–160634 (Sub-No. 1), issued the DALLAS G & G EXPRESS, INC., of Dallas, TX, which authorizes the transportation of *general commodities,* (except classes A and B explosives, commodities in bulk, and used household goods), in containers, between points in Harris and Galveston Counties, TX, on the one hand, and, on the other, points in Archer, Bonham, Clay, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Grayson, Hunt, Jack, Johnson, Kaufman, Lamar, Montague, Olney, Palo Pinto, Parker, Rockwall, Stephens, Tarrant, Wichita and Wise Counties, TX, restricted to traffic having a prior or subsequent movement by water or rail. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062.

Note.—Transferee holds authority in MC–154965. TA has been filed.

MC–FC–80067. By decision of September 29, 1982. Under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to TRANS-STATES EXPRESS, INC. OF Cincinnati, OH, of Certificate No. MC–145986 (Sub-No. 2), issued June 1982, to EVERETT P. GLAZE of Columbus, OH, authorizing the transportation of *General commodities,* (except household goods, commodities in bulk, and classes A and B explosives), between points in GA, IL, NC, OH, TX, PA, NJ, KY, FL, KS, NY, TN, MN, VA, RI, and MO, on the one hand, and on the other, those points in the U.S. in and east of IA, MN, MO, KS, OK, and TX. Representative: Robert T. Lawle, 300 Reisch Bldg., Springfield, IL 61701.

MC–FC–80068. By decision of September 29, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to INBULK TRANSPORT, INC., of Hammond, IN, of Certificate No. MC–124070 (Sub-No. 35F) issued January 30, 1981, to CHEMICAL HAULERS, INC., of Hammond, IN, authorizing the transportation of chemicals, in bulk, between points in Cook, DuPage, Grundy, Kane, Lake McHenry, and Will Counties, IL, and Lake and Porter Counties, IN, on the one hand, and, on the other, points in IN, IA, KS, KY, MI, NM, MO, OH, TN, and WI. Representative: Allan C. Zuckerman, Suite 826, 221 North LaSalle Street, Chicago, IL 60601.

MC-FC-80069. By decision of September 30, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to C.E. HOWARD TRANSFER CO., INC., of Certificate No. MC-150558F issued July 21, 1981 to GEORGETOWN CONSTRUCTION CO., INC., authorizing the transportation of iron oxide granules, in bulk, in dump vehicles, from Georgetown, SC, to Castle Hayne, NC. Representative: Frank A. Graham, Jr., Attorney at Law, P.O. Box 11864, Columbia, SC 29211. T/A not sought.

MC-FC-80070. By decision of September 28, 1982, issued under 49 U.S.C. 10926 and transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to APACHE TRUCK LEASING, INC., of Johnston, RI, of Certificate No. MC-107760 and Sub-Nos. 2, 4, and 5 issued, respectively, June 14, 1966, October 1, 1971, December 6, 1972, and October 7, 1980, to MOHAWK TRUCKING AND SALVAGE CO., of Johnston, RI, authorizing the transportation of: (1) *such commodities* as require transportation by dump trucks and can be unloaded by

dumping,—between points in RI, CT, and MA, within 25 miles of RI, (2) *sodium chloride*, in bulk, in dump vehicles from Providence, RI, to points in CT and MA on and east of Int. Hwy 91, beginning at New Haven, CT, and extending north to the junction of Int. Hwy. 91 and 90 near Springfield, MA, and to those points on and south of Int. Hwy. 90 (Massachusetts Turnpike) beginning at junction of Int. Hwy. 91 and 90 near Springfield, MA, and extending east to Boston, MA.; (3) *metal scrap*, in dump vehicles between Providence, RI, on the one hand, and, on the other, points in CT, ME, MA, NH, RI, and VT; (4) *soidum chloride*, in bulk, in dump vehicles (1) from Boston, MA, to points in CT, MA, RI, and (2) from Providence, RI, (a) to those points in CT and ME west of Int. Hwy. 91, and (b) those point in MA west of Int. Hwy. 91 and north of Int. Hwy. 90. Representative: Russell B. Curnett, P.O. Box 366, 826 Orleans Road, Harwich, MA 02645–0366.

MC-FC-80075. By decision of September 27, 1982, issued under 49 U.S.C. 10926, and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to CLARK TRUCKING, INC., of Avenel, NJ, of Certificate Nos. MC/149334 (Sub-Nos. 1, 2X, 3 and 5) and Permit Nos. MC-149334 (Sub-Nos. 2X and 4) issued to PIONEER ACQUISITION CORP. (DEBTOR IN POSSESSION), which authorize the transportation of (1) *general commodities* (with exceptions), for the U.S. Government, between points in the U.S.; (2) *food and related products*, between points in Kent County, MI, on the one hand, and, on the other, points in the U.S.; (3) *tape, tape products, and materials, equipment and supplies* used in the manufacture of tape and tape products (except commodities in bulk), (a) from Beacon, NY, to Carbondale, IL, and points in AZ, CA, NV, OR, and WA, and (b) from Carbondale, IL, to points in AZ, CA, NV, OR, and WA; (4) *such commodities* as are dealt in or used by manufacturers and distributors of paper products, between points in the U.S., under continuing contract(s) with Michigan Lithographing Co., of Grand Rapids, MI; and (5) *general commodities* (with exceptions), between points in the U.S., under continuing contract(s) with United Forwarding, Inc., of Omaha, NE. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106.

Notes.—TA has been filed. Transferee hold authority under MC-160673.

MC–FC–80077. By decision of September 30, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to V R L CORPORATION, of Traverse City, MI, of Certificate No. MC–95840 (Sub-No. 1) issued September 28, 1971, to ASHTON-DAMRON TOWING CO., of Detroit, MI authorizing the transportation of (1) *wrecked and disabled automobiles, trucks, trailers, and buses*, in truckaway service, and *used tractors or used trailers* to be used as replacements for wrecked or disabled tractors or trailers, in truck-away service, between Detroit, MI and points in that part of MI and OH within 100 miles of Detroit, on the one hand, and, on the other, points in IL, IN, OH, PA, NY, WI, KY, WV and TN, restricted against the transportation of trailers designated to be drawn by passenger automobiles; and (2) *wrecked, disabled, and repossessed motor vehicles*, by use of wrecker equipment only, and *replacement vehicles* for wrecked and disabled motor vehicles, between points in MI, on the one hand, and, on the other, points in IL, IN, KY, NY, OH, PA, TN, WV and WI (except Madison, WI). Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49685. Transferee holds no authority. TA not filed.

MC–FC–80079. By decision of September 30, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to MEG INDUSTRIES, INC., of Omaha, NE, of Certificate No. MC–138627 (Sub-118), issued to SMITHWAY MOTOR XPRESS, INC., of Fort Dodge, IA, authorizing the transportation of general commodities (except Classes A & B explosives) between the facilities of Payless Cashways, Inc., also known as Furrow Building Materials, at points in the U.S. on the one hand, and, on the other, points in the U.S. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Road, Omaha, NE 68114.

Notes—Transferee holds no authority from this Commission. An application for TA has not been filed.

MC–FC–80083. By decision of September 28, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Line Haul Service Corporation of Certificate No. MC–153719 Sub 1 issued to Commercial Cartage Corporation of Taylor, MI, authorizing general commodities (with certain exceptions) between points in 33 named counties in MI and Lucas and Wood Counties, OH. Representative: Gene B. Straley, P.O. Box 157, Taylor, MI 48180. TA lease is not sought. Transferee is not a carrier.

MC–FC–80086. By decision of September 30, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to COE Transport, Inc. of Certificate No. MC–153509 (Sub-No. 3) issued September 22, 1981 to Kentucky Dispatch, Inc. authorizing the transportation of general commodities (except class A and B explosives) between Louisville, KY on the one hand, and on the other, points in the United States (except AK and HI). Representative: James B. Murphy, 835 W. Jefferson Street, Suite 102, Louisville, KY 40202.

Note.—Transferee presently holds no authority from this Commission. TA has not been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–27837 Filed 10–8–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions

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 about the following to Team 2, (202) 275–7030.

Volume No. OP2–247

Decided: October 1, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. Member Chandler not participating.

MC 32122 (Sub-10), filed September 27, 1982. Applicant: PAZEN TRANSFER LINE, INC., P.O. Box 243, Waukau, WI 54980. Representative: Edward J. Gerrity, 601 W. College Ave. (P.O. Box 914), Appleton, WI 54912, (414) 734–5608. Transporting *machinery*, and *such commodities* as are dealt in or used in the manufacture, sale or distribution of machinery, between points in Hopkins County, KY, White County, AR, and Fond Du Lac County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141523 (Sub-9), filed September 27, 1982. Applicant: C. R. KIDD PRODUCE, INC., P.O. Box 364, Springdale, AR 72764. Representative: Charles M. Williams, 1600 Sherman St., #665, Denver, CO 80203, (303) 839–5856. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI).

MC 142672 (Sub-194), filed September 27, 1982. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Harry Keifer (same address as applicant), (501) 997–1683. Transporting *such commodities* as are dealt in by grocery and food business houses, between points in Orange County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147062 (Sub-14), filed September 28, 1982. Applicant: EXPRESS TRANSPORTATION CO., P.O. Box 11107, Chattanooga, TN 37401. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004, 202–347–8862. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TN, AL, and GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151193 (Sub-31), filed September 28, 1982. Applicant: PAULS TRUCKING CORPORATION, 286 Homestead Ave., Avenel, NJ 07001. Representative: Michael A. Beam (same address as applicant), 201–499–3869. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Tropic Ice, Inc., of Hialeah, FL.

MC 156852 (Sub-1), filed September 27, 1982. Applicant: LENGNER & SONS PRODUCE EXPRESS, 3438 Mendocino Ave., Santa Rosa, CA 95404. Representative: Terry J. Coniglio, 3325 Wilshire Blvd., Suite 1214, Los Angeles, CA 90010, (213) 384–8430. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (a) between points in CA, (b) between points in OR, and (c) between points in CA, on the one hand, and, on the other, points in OR.

MC 157343 (Sub-1), filed September 27, 1982. Applicant: GOLD TRANSIT SYSTEMS, INC., P.O. Box 26203, Midwest City, OK 73126. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154, 405–424–3301. Transporting *metal products, machinery, oil field commodities, and chemicals*, between points in OK, on the one hand, and, on the other, points in AR, CO, KS, LA, MO, MS, MT, NE, ND, NM, TN, TX, UT, and WY.

MC 159333 (Sub-1), filed September 27, 1982. Applicant: McINVALE FREIGHT LINES, INC., 5965 Hwy 18 South, Jackson, MS 39209. Representative: W. M. McInvale (same as applicant), (601) 922–2020. Transporting *general commodities (except classes A and B explosives, household goods and commodities in bulk)*, between points in AL, AR, AZ, CA, CO, CT, FL, GA, ID, IL, IN, KY, LA, MD, MA, MI, MO, MS, NC, NJ, NV, NM, NY, OH, OR, PA, SC, TN, TX, VA, WA, WI, WV and DC.

MC 159792 (Sub-2), filed September 24, 1982. Applicant: MID-AMERICA DAIRYMEN, INC., P.O. Box 1837 S.S.S., 800 W. Tampa, Springfield, MO 65805. Representative: E. R. Grant (same address as applicant), (417) 865–9641. Transporting *petroleum products and related products*, between Ponca City, OK, and St. Louis, MO, on the one hand, and, on the other, points in Vanderburgh County, IN, and Jefferson County, KY.

MC 161293, filed September 27, 1982. Applicant: E-Z LEASE, INC., 1260 E. 1050 South, Fairmont, IN 46928. Representative: Andrew K. Light, 1301 Merchants Plaza-East Tower, Indianapolis, IN 46204, 317–638–1301. Transporting *malt beverages*, between points in AL, AR, FL, GA, IL, IN, IA, KY, LA, MI, MN, MO, MS, NC, OH, OK, PA, SC, TN, TX, VA, WV, and WI.

MC 162083, filed September 28, 1982. Applicant: PRATER ENTERPRISES, INC., Route 2, Box 54, Canadian, TX 79014. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768–2207, (512) 476–6391. Transporting *Mercer commodities*, between points in AR, CO, KS, LA, MT, NE, ND, NM, OK, SD, TX, and WY.

MC 163983, filed September 24, 1982. Applicant: KWIK EXPRESS, INC., 2828 Arroyo Drive, Suite 138, Dallas, TX 75219. Representative: D. Paul Stafford, Suite 1125, Frito Lay Tower, P.O. Box 45538, Dallas, TX 75245, 214–358–3341. Transporting *food and related products*, between points in AL, AZ, AR, CA, CO, FL, GA, IL, IA, KS, KY, LA, MS, MO, NV, NM, NC, OK, SC, TN, TX, and UT.

MC 164012, filed September 27, 1982. Applicant: JOSEPH E. BURL, d.b.a. BURCO DISTRIBUTING, 2801 W. Glendale Ave., Phoenix, AZ 85021. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014, 602–264–4891. Transporting *meats and meat byproducts*, and *such commodities* as are used by packing houses, between points in AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team Four (202) 275–7669.

Volume No. OP4–353

Decided: October 4, 1982.

By the Commission, Review Board No. 2. Members Carleton, Williams, and Ewing.

FF-56 (Sub-8), filed September 23, 1982. Applicant: SUPERIOR FAST FREIGHT, 611 N. Mission Rd., Los Angeles, CA 90033. Representative: C. Patrick Vinson, P.O. Box 60100, Terminal Annex, Los Angeles, CA 90060, (213) 227-1122. As a *freight forwarder*, in connection with the transportation of *general commodities* (except classes A and B explosives), between points in the U.S. *Condition:* A grant of authority is conditioned upon the receipt from applicant of a satisfactory explanation why the proposed operations are not proscribed by 49 U.S.C. 11323(c), which limits the ownership and control of other carriers by freight forwarders. In order to expedite issuance of any authority please submit a copy of the affidavit to Team 4, Room 2410.

W-406 (Sub-16), filed September 7, 1982. Applicant: OHIO BARGE LINE, INC., 600 Grant St., Pittsburgh, PA 15219. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219-2383, (412) 471-1800. To operate as a *contract carrier*, by water, by non-self propelled vessels with the use of separate towing vessels in the transportation of *general commodities*, and by towing vessels in the performance of *general towage*, (1) between ports and points along the Tennessee River and its tributary waterways (including the Barkley Canal), and (2) between ports and points along the Tennessee River, and its tributary waterways, on the one hand, and, on the other, ports and points on the Arkansas and Cumberland Rivers, the Gulf Intracoastal Waterways, the Illinois Waterway, including points in northern IN by way of Lake Michigan, the Kanawha, Kentucky, Mississippi, Monogahela, Ohio, Red, and Verdigris Rivers and their tributary waterways.

Note.—This application contemplates operations which should result in decreased energy consumption in comparison with existing energy consumption in the affected area. To the extent traffic will be diverted from existing transportation modes, greater energy efficiencies may be obtained without disruption to existing patterns of energy distribution or to development of energy resources. The application is, in all respects, consistent with prevailing goals and objectives of the National Energy Policy.

MC 163757, filed September 8, 1982. Applicant: STEPHEN CATANDELLA, d.b.a. S & D TRANSPORT SYSTEMS, INC., 88 Thompson St., Huntington, CT 06484. Representative: Howard T. Owens, Jr., 10 Middle St., Bridgeport, CT 06601, (203) 334-4153. 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).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27842 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30044]

Denver and Rio Grande Western Railroad Co.; Construction and Operation—In Carbon and Emery Counties, UT

The Denver and Rio Grande Western Railroad Company, P.O. Box 5482, Denver, CO 80217, represented by Kendall T. Sanford, General Attorney, P.O. Box 5482, Denver, CO 80217, and John H. Caldwell and Denise M. O'Brien, 888 16th Street, NW., Washington, DC 20006, hereby gives notice that on the 29th day of September, 1982, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. 10901 for a decision approving and authorizing the construction and operation of an extension of its Castle Valley Spur in UT, an approximately 62 mile branch line, to be known as the Emery Line or Emery Branchline, from the Spur's milepost 2.6 to Consolidation Coal Company's planned loop track and coal loading facility located at about milepost 65 on the proposed line.

Pursuant to 49 U.S.C. 10901, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423, and the aforementioned counsels for applicant, within 35 days after the filing of the application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27840 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

[AB 43 SDM]

Illinois Central Gulf Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the ILLINOIS CENTRAL GULF RAILROAD COMPANY has filed with the Commission its amended color-coded system diagram map in docket No. AB 43 SDM. The Commission on September 24, 1982, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 43 SDM.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27843 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

[AB 188 SDM]

Rail Carrier; Johnston and Stony Creek Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the JOHNSTOWN & STONY CREEK RAILROAD COMPANY has filed with the Commission its amended color-coded system diagram map in docket No. AB 188 SDM. The Commission on September 29, 1982, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 188 SDM.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27844 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30030]

Rair Carrier; Southern Railway Co.; Abandonment-Exemption in Buncombe County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.* the abandonment by Southern Railway Company of a portion

of its track from NC Station 123+00 to NC Station 130+28, in Buncombe County, NC.

DATES: This exemption will be effective on November 12, 1982. Petitions to stay the effectiveness of this decision must be filed by October 22, 1982, and petitions for reconsideration must be filed by Nobember 1, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, D.C. 20423

(2) Petitioner's representative: Nancy S. Fleischman, P.O. Box 1808, Washington, D.C. 20013

Pleadings should refer to Finance Docket No. 30030.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th Constitution Ave., NW., Washington, D.C. 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll-free for outside the DC area.

Decided: October 4, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-27848 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

[Amendment No. 1 to Revised I.C.C. Order No. 83 Under Service Order No. 1344]

Rail Carriers; Rerouting Traffic

Service Date October 6, 1982.

To: Chesapeake and Ohio Railway; Grand Trunk Western Railroad Company; Michigan Northern Railway Company, and Soo Line Railroad Company.

Upon further consideration of I.C.C. Order No. 83 and good cause appearing therefor:

It is ordered:

I.C.C. Order No. 83 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* The order shall expire at 11:59 p.m., December 31, 1982, unless otherwise modified, amended or vacated.

Effective date. This order shall become effective at 11:59 p.m., September 30, 1982.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 22, 1982.

Interstate Commerce Commission.

J. Warren McFarland,

Agent.

[FR Doc. 82-27839 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP2-250]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights Authority Prior to Certification

The following grant of operating right authority is republished by order of the Commission to indicate a broadened grant of authority over that previous notice in the **Federal Register.**

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register** notice.

By the Commission.

Agatha L. Mergenovich,

Secretary.

MC 156103 (Sub-2) (republication), filed February 4, 1982, published in the **Federal Register** issues of March 2, 1982 (47 FR 8873) and April 20, 1982 (47 FR 16900), and republished this issue. Applicant: MASS TRANSPORT, INC., 12 Mason St., Worcester, MA 01609. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. A Decision of the Commission, *Division 2,* Acting as an Appellate Division, Commissioners Andre, Gilliam, and Taylor decided August 31, 1982, and served September 7, 1982, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *contract carrier,* by motor vehicle, over irregular routes, transporting (1) *coin, currency, and instruments and documents* used in the business of banks and banking institutions in armored motor vehicles escorted by armed guards, between points in the United States under continuing contract(s) with banks and banking institutions, and (2) *commercial papers and written instruments* (except coin, currency, and negotiable instruments), between points in the United States under continuing contract(s) with Food Mart, Division of Waldbaum, Inc., of Holyoke, MA; that applicant is fit, willing, and able properly to perform the service and to conform to statutory and administrative requirements. The purpose of this republication is to show actual scope of authority granted.

[FR Doc. 82-27841 Filed 10-8-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 27, 1982—October 1, 1982.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,953; Vulcan Corp., Amesbury, MA

TA-W-12,982; Singer Co., Controls Div., Wauwatosa, WI

TA-W-13,086; White Consolidated Industries, Inc., Fayscott Div., Dexter, ME

TA-W-13,140; Berkeley-Davis, Inc., Danville, IL

TA-W-13,259; Auto Specialties Manufacturing Co., Casting Div., St. Joseph, MI

TA–W–13,260; Auto Specialties Manufacturing Co., Casting Div., Riverside, MI
TA–W–13,258; AMPCO-Pittsburgh Corp., Wyckoff Steel Div., Ambridge, PA
TA–W–13,218; Washington Steel Corp., Washington, PA
TA–W–13,219; Washington Steel Corp., Houston, PA
TA–W–13,217; Phoenix Sportswear, Inc., New York, NY
TA–W–12,963; American Optical Corp., Brattleboro, VT
TA–W–13,025; New York Imperial Foundations, Inc., Brooklyn, NY
TA–W–13,021; Seaside Blouse Manufacturing Corp., Bridgeport, CT
TA–W–13,016; Global Systems Corp., Haverhill, MA
TA–W–13,066; F.L. Smidth & Co., Lebanon, NJ
TA–W–13,170; Courtney Garment Apparel, Kansas City, KS
TA–W–13,175; Rice Coat & Suit Co., Kansas City, MO

In the following case the investigation revealed that criterion (3) had not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–13,214; Reynolds Aluminum Building Products Co., Stratford, CT

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–13,994; Anamax Mining Co., Sahurita, AZ

Aggregate U.S. imports of copper ore and concentrate did not increase as required for certification.

TA–W–13,999; Sacaton Unit of ASARCO, Inc., Casa Grande, AZ

Aggregate U.S. imports of refined copper did not increase as required for certification.

TA–W–13,256; A. Grien Forest Products, Inc., Glide, OR

Aggregate U.S. imports of soft wood logs are negligible.

TA–W–13,215; Tivonne Fashions, Inc., Newark, NJ

Aggregate U.S. imports of women's raincoats did not increase as required for certification.

TA–W–12,919; Angelo Productions, Ltd., New York, NY

Aggregate U.S. imports of paper patterns for women's apparel are negligible.

Affirmative Determinations

TA–W–12,949; General Electric Co., Housewares & Audio Business Div., Ontario, CA

A certification was issued in response to a petition received on August 31, 1981 covering all workers separated on or after August 18, 1980.

TA–W–13,216; Paula Lawrence, Ltd., New York, NY

A certification was issued in response to a petition received on January 20, 1982 covering all workers separated on or after January 15, 1981 and before March 1, 1981.

TA–W–12,776; Gibson, Inc., Kalamazoo, MI

A certification was issued in response to a petition received on June 15, 1981 covering all workers separated on or after March 16, 1981 and before April 1, 1982.

I hereby certify that the aforementioned determinations were issued during the period September 27, 1982—October 1, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–27974 Filed 10–8–82; 8:45 am]
BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–82–5–C]

BCNR Mining Co.; Petition for Modification of Application of Mandatory Safety Standard (Correction)

This notice amends a petition for modification of application of mandatory standard to add information to the document published in the **Federal Register** on March 2, 1982 (47 FR 8896). This correction is necessary to add specific areas of the mine for which modification is sought and which were erroneously omitted from the earlier **Federal Register** notice. Paragraph number 2 is hereby amended to read: 2. The return aircourses from 1 west working section and the return aircourses between the 2 flat junction and the Hawkins shaft contain bad roof conditions, pools of standing water and numerous roof falls which make passage through or access to such returns impassable and/or extremely hazardous to the miners making such examination.

Request for Comments

Persons interested in this amendment to the petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 12, 1982. Copies of the petition are available for inspection at that address.

Dated: October 4, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82–27970 Filed 10–8–82; 8:45 am]
BILLING CODE 4510–43–M

[Docket No. M–82–79–C]

Bethlehem Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Bethlehem Mines Corporation, Room 1871, Martin Tower, Bethlehem, Pennsylvania 18018 has filed a petition to modify the application of 30 CFR 75.1707 (escapeway; intake air; separation from belt and trolley haulage entries) to its Mine No. 60 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the escapeway required to be ventilated with intake air be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section.

2. The mine's longwall sections are a 3-entry system. The No. 1 entry is for return, the No. 2 entry contains the supply track and is used for the intake escapeway, and the No. 3 entry is used for the conveyor belt.

3. As an alternative method, petitioner proposes that during production shifts:

a. The No. 2 track entry will have a lock on the trolley wire assuring de-energization while workers are inby;

b. The trolley wire lock key will be under the control of certain designated employees;

c. The battery-powered mantrips and jeeps will be used to transport personnel;

d. The dispatcher will be instructed to not allow the entry of any nonbattery-powered equipment;

e. If, under certain limited circumstances the trolley wire must be energized, all employees at the face will be notified and removed outby the loading ramp. Therefore, the intake escapeway will be the track entry and

the above-listed precautions will assure employees of a de-energized intake escapeway.

4. In addition, petitioner proposes that section supplies and equpiment will be handled during off-shifts, idle days or between shifts. When it becomes necessary to energize the trolley wire to handle these supplies and equipment, only those employees involved in section supply and equipment handling will be permitted in the section; the No. 3 conveyor belt entry will be de-energized and locked out during this time and the key will be under the control of certain designated people. The No. 3 conveyor belt entry will be the alternate escapeway for the supply handling crew.

5. Petitioner states that the alternative method proposed above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 12, 1982. Copies of the petition are available for inspection at that address.

Dated: October 4, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-27971 Filed 10-8-82; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-82-75-C]

Emerald Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Amoco Minerals Company, 7000 South Yosemite Street, P.O. Box 3299, Englewood, Colorado 80155 has filed, on behalf of Emerald Mines Corporation, a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Emerald Mine No. 1 (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that in a coal mine which has been developed in more than two entries, where the conditions in the entries other than belt haulage entries are such as to permit adequately the coursing of intake or return air through such entries, the belt haulage entries shall not be used to ventilate, unless such entries are necessary to ventilate active working places.

2. The belt haulage entries are ventilated by coursing air from the tailpiece to a regulator and from the loading point to the same regulator. At the regulator, the air is directed into the return. Conveyor belts are used for section, submain and main line coal haulage. Each longwall panel has four entries and the mains have seven main intake entries and five main return entries. At least one isolated fresh air escapeway is currently provided on each section. These escapeways will be retained if the modification is granted.

3. As an alternative method, petitioner proposes to use the air in the belt entry to ventilate active working places.

4. In support of this alternative method, petitioner states that:

a. The belt conveyor entry will be examined at least once during each coal producing shift while mines are working inby;

b. Fire protection requirements will be strictly followed, especially as they pertain to water lines, fire outlets, fire hoses, fire suppression systems, fire warning devices and flame-resistant belting;

c. A carbon monoxide (CO) detection system will be installed in the conveyor belt entry. The system will be set to warn all inby workers when the CO level reaches ten parts per million over the ambient air level. The audible and visual alarm system will be installed at specified 3,000 foot intervals, with the first installed immediately inby the belt drive. A distinctive audible and visual alarm will be located at the belt tailpiece.

5. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 12, 1982. Copies of the petition are available for inspecton at that address.

Dated: October 4, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 27972-82 Filed 10-8-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-82-65-C]

Triple S. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Triple S. Coal Company, 1319 West Water Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope (I.D. No. 36-07134) located in Northumberland County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are nonexistent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

8. Petitioner states that the alternative method proposed will at all times provide the same measure of protection

for the miners affected as that provided by the standards.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 12, 1982. Copies of the petition are available for inspection at that address.

Date: October 4, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-27973 Filed 10-8-82; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 2401 E Street, NW., Washington, D.C. 20506 in Room 1422, from 9:00 a.m. to 5:00 p.m., on November 5, 1982.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 1983.

Because the proposed meeting will consider commercial and financial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202/724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 82-27951 Filed 10-8-82; 8:45 am]

BILLING CODE 7536-01-M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, NW., Washington, D.C. 20506:

DATE: October 13, 1982.

TIME: 12:30 p.m. to 5:00 p.m.

ROOM: 911.

PROGRAM: This meeting will review applications submitted for Program Development, Division of General Programs, for projects beginning after February 1, 1983.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting 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 signficantly 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 this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code. Because this panel will review an application to go before the November 1982 meeting of the National Council on the Humanities and it was not possible to review this by earlier panels, the usual 15 day notice requirement could not be met.

Further information about this meeting 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. 82-27950 Filed 10-8-82; 8:45 am]

BILLING CODE 7536-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) Collection: title: Public Service Pension Questionnaire.

(2) Form(s) submitted: G-208.

(3) Type of request: New.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals applying for or receiving spouse or survivor annuities under the RRA.

(6) Annual responses: 62,500.

(7) Annual reporting hours: 2,683.

(8) Collection description: A spouse or survivor annuity under the RR Act can be subject to a reduction for a public service pension. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 82-27863 Filed 10-8-82; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-19087; File No. SR-Amex. 82-12]

American Stock Exchange, Inc., Relating to Shareholder Approval Requirements for Certain Acquisitions and Executive Compensation Arrangements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78 (s)(b)(1), notice is hereby given that on September 23, 1982, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Sections 711, 712, 713, 714, and 302 of the Amex Company Guide to discontinue the requirement for shareholder approval as a prerequisite for listing shares to be issued: (a) as full or partial consideration for business or assets of another company, so long as (i) less than 20 percent of outstanding common stock is to be issued and (ii) corporate affiliates do not have a five percent or greater interest in the transaction; and (b) in connection with minimal executive stock compensation arrangements.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of an Statutory Basis for the Proposed Rule Change

(a) *Purpose.* The purpose of amending the rules is to update the requirements for shareholder approval. The Exchange re-examined its shareholder approval rules in light of the changes in the quality and timeliness of corporate disclosure and in the composition and standards of corporate boards of directors which have taken place in the two decades since they were adopted.

An exception for the issuance of a non-material percentage of stock pursuant to a plan for key employees was found to be reasonable in view of current executive compensation practice. This exemption is justified by the same rationale as the exemption for options to induce qualified executives to accept employment presently found in the rule.

The requirement for shareholder approval as a condition to listing shares to be used in acquisitions has been modified to exclude transactions involving less than 20% of outstanding common stock except in the case where an officer, director or principal shareholder has at least a 5% interest in the company or assets to be acquired, or in the consideration to be paid, in an acquisition transaction involving the issuance of 5% or more of outstanding common stock.

The purpose of the amendment of the rules affecting other 20% issuances of stock is to clarify the Exchange's broad implied discretion and, in accordance with Exchange practice, to limit the shareholder approval requirements to material transactions involving the issuance of stock at less than market or book value or the listing of a formerly unlisted company without the safeguards inherent in the listing process.

(b) *Basis.* The proposed amendments are consistent with Section 6(b) of the Exchange Act in general and further the objectives of Section 6(b)(5) of the Act in particular in that they are designed to protect investors and the public interest and are not designed to regulate matters not related to the purposes of Section 6(b) or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that the proposed rule changes will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted November 2, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 29, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27995 Filed 10-6-82; 8:45 am]

BILLING CODE 8010-01-M

Boston Stock Exchange, Inc., for Unlisted Trading Privileges in Certain Securities; Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 4, 1982.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Bard, C. R., Inc.

Common Stock, $.25 Par Value (File No. 7–6325)
Briggs & Stratton Corp.
Common Stock, $3 Par Value (File No. 7–6326)
Brush Wellman Inc.
Common Stock, $1 Par Value (File No. 7–6327)
Campbell Taggert, Inc.
Common Stock, $1 Par Value (File No. 7–6328)
Canadian Pacific Enterprises
Common Stock, No Par Value (File No. 7–6329)
Carnation Company
Common Stock, $2 Par Value (File No. 7–6330)
Central Soya Company, Inc.
Common Stock, No Par Value (File No. 7–6331)
Central Telephone & Utilities Corp.
Common Stock, $2.50 Par Value (File No. 7–6332)
Clark Equipment Company
Common Stock, $7.50 Par Value (File No. 7–6333)
Collins & Aikman Corp.
Common Stock, No Par Value (File No. 7–6334)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 26, 1982 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–27992 Filed 10–8–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22655, 70–6776]

The Connecticut Light & Power Co.; Proposals To Execute Eurodollar Loan Agreements, To Organize a Foreign Financing Subsidiary, and To Issue and Sell Debentures in the Eurobond Market; Request for Exceptions From Competitive Bidding

The Connecticut Light & Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a wholly-owned subsidiary of Northeast Utilities, a registered holding company, has filed with this Commission an application-declaration and an amendment thereto pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(2), 50(a)(3) and 50(a)(5) promulgated thereunder.

CL&P seeks Commission authorization to enter into a multibank $75 million Eurodollar credit arrangement evidenced by two or more agreements (the "Loan Agreements") and to organize a new, wholly-owned financing subsidiary for the express purpose of engaging in Eurodollar borrowing transactions. Funds available from the credit arrangement would be applied in part to provide working capital for CL&P's operations and to create equity capital for the financing subsidiary. The subsidiary will serve as a vehicle for the issuance and sale of debentures in the Eurobond market, the proceeds of which will be loaned, in turn, to CL&P.

CL&P asserts that the proposed transactions will provide alternatives to domestic financing sources. Borrowings will be effected for working capital purposes when interest rates will be competitive with, or more favorable than, comparable arrangements available in the United States. It is also represented that at times in the past several years there have been cost savings available in the Eurobond market relative to the domestic market ranging from 30 to 80 basis points, and at times exceeding 100 basis points. Through the proposed transactions, CL&P intends to be in a position to take advantage of such cost savings when they are available.

The Loan Agreements provide that CL&P may borrow up to $50 million for general corporate purposes ("Tranche A") and up to $25 million to capitalize the financing subsidary ("Tranche B"). Effective interest rates are set with reference to the London inter-bank offered rate ("LIBOR") as it may fluctuate from period to period, for one, three or six-month interest periods as determined by CL&P. Borrowings under Tranche A will be available for a period of two years, in multiples of $1 million but not less than $5 million, will bear interest at LIBOR plus ½ percent on all amounts actually borrowed and will carry the following fees 1) an initial management fee of ¼ percent on the line of credit; 2) a ¼ percent commitment fee on the unused portion of the line of credit; and 3) a $5,000 agency fee per annum. All amounts under Tranche A will be due at the expiration of the two-year period but may be prepaid, without penalty, at the end of any applicable LIBOR interest period. Based on LIBOR rates (as of September 17, 1982) of 11.50 percent, 11.88 percent and 12.25 percent for one, three and six-month interest periods, respectively, CL&P estimates the effective cost of borrowing under Tranche A for these periods would be 12.215 percent, 12.59 percent and 12.965 percent, respectively.

Net proceeds from Tranche A would be applied, together with other available funds, to provide working capital and to finance CL&P's construction expenditures for 1982 and 1983 estimated at $848,043,000 (including AFUDC but excluding nuclear fuel).

Under Tranche B, the $25 million, or any portion thereof, will be available for borrowing, at one-time-only, within two years of the date of Loan Agreements. The amount actually borrowed will be due seven years from the date of the borrowing although it may be prepaid at the end of any applicable LIBOR interest period. Interest will be payable at a rate per annum no greater than LIBOR plus ⅝ percent. An initial management fee of ¼ percent will be charged on the line of credit as well as a commitment fee of 3/16 percent per annum payable quarterly on the average daily balance of Tranche B until drawn by CL&P. CL&P states that in lieu of Tranche B an alternative method may be chosen to capitalize the financing subsidiary.

CL&P seeks authorization to purchase shares of the financing subsidiary proposed to be organized and/or to make capital contributions thereto. It will be organized under the laws of the Netherlands Antilles and its principal functions will be to borrow funds outside of the United States through the issuance of debentures in the Eurobond market. It is stated that organization in this manner is necessary in order for debenture interest to be free from withholding taxes, a common, accepted characteristic of Eurobond financing. To eliminate the tax withholding requirement it is represented that a debt-to-equity capitalization ratio no higher than 3.3 to 1 is advisable. Borrowings under Tranche B, or funds from an alternative arrangement, will be applied to capitalize the financing subsidiary and to maintain this ratio. Substantially all of the equity investment in the new subsidiary will be reinvested in one or more financial instruments, such as a certificate of deposit with a major financial institution. The terms of the reinvestment will be matched as closely as practicable to those of the borrowings under Tranche B in order to minimize to CL&P the effective cost of

capitalization. The effective cost (the difference between borrowing costs under Tranche B and the return on the investment of equity capital) would not be likely to exceed ½ percent plus taxes and expenses.

The debentures will be issued within two years from the date of the Loan Agreements and will be sold in a public offering outside of the United States through a syndicate of banks and other financial institutions. CL&P requests an exception from the competitive bidding requirements of Rule 50 promulgated under the Act in order to negotiate with managing underwriters the principal amount of the debentures (not greater than $75 million), the public offering price (not less than 98 nor more than 100 percent of the principal amount), maturity and interest rate. The debentures will be issued under an indenture between CL&P, the financing subsidiary, and a major financial institution, acting as trustee. CL&P will unconditionally guarantee the principal of and interest on the debentures which will be unsecured general obligations of the subsidiary. Interest on the debentures would be payable annually, in arrears, in United States dollars. It is represented that if debentures had been issued on September 17, 1982, the anticipated nominal interest rate would have been approximately 15.375 percent with an anticipated effective interest cost of 15.62 percent, including borrowing costs related to Tranche B.

Depending upon the maturity of the debentures they may be non-callable for up to 6 years. Thereafter, the financing subsidiary will have the option of redeeming all or a portion of the debentures at an initial optional redemption price likely to be 101½ percent of the principal amount. The initial redemption price would decline thereafter on a straight-line basis until maturity at a rate of ½ percent annually for debentures maturing in 7 or 8 years and at a rate of ⅜ percent for those maturing in 9 or 10 years. The debentures wil not be subject to a mandatory sinking fund. The financing subsidiary and CL&P will be permitted to purchase the debentures in the open market, on the stock exchange on which they are listed, and in private transactions at a price not exceeding 120 percent of the market price of the debentures on the London Stock Exchange at the close of the last business day before the private transaction.

The financing subsidiary and CL&P will be required to pay, as additional interest, any additional amount necessary so that the amount of every interest payment on the debentures to holders who are not United States or Netherlands Antilles residents shall be (after withholding any tax imposed on such payment by the United States or Netherlands Antilles) equal to the stated interest rate of the debentures. If, as a result of changes in the laws of the Netherlands Antilles or the United States, the financing subsidiary would be required to make such additional payments, the financing subsidiary would have the option of redeeming the debentures as a whole (but not in part) at their principal amount, together with accrued interest. A similar redemption option would also be available, if as a result of changes in the laws of the Netherlands Antilles or the United States, CL&P or the financing subsidiary should determine that United States withholding tax would apply to interest payments receiveable by the financing subsidiary from CL&P and that such obligation cannot be avoided by the use of reasonable measures.

Net proceeds from the sales of the debentures will be loaned to CL&P by the financing subsidiary. To evidence these borrowings, CL&P will issue unsecured term notes to the financing subsidiary. Any borrowings of CL&P pursuant to the Loan Agreements and the principal of any debentures issued and sold by the financing subsidiary in the Eurobond market will be repaid at their respective maturities from CL&P's internal cash resources or from the proceeds of long-term debt or equity financing. Net proceeds from the sales of the debentures will be used to retire a portion of CL&P's short-term debt then outstanding.

CL&P requests an exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph 50(a)(5) regarding the sale of the debentures. It asserts that the protections of competitive bidding are not appropriate in the public interest or for the protection of investors or consumers for reasons which, among other reasons, including the following: (1) active competition is anticipated because there has been active competition among financial institutions with respect to Eurodollar financing taken as a whole and (2) the nature of a Eurobond financing precludes competitive bidding because of problems inherent in coordinating the flow of information among underwriters in numerous foreign countries.

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 November 1, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-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 application-declaration, as amended, 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.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27991 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19046; File No. SR-OCC-82-14]

Proposed Rule Change by Options Clearing Corporation; Relating to the Issuance of Options on Stock Groups, the Clearing and Settlement of Transactions Therein, and the Processing and Settlement of Exercises Thereof

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 30, 1982, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

The proposed rule change would provide for the issuance of options covering groups of underlying stocks. (Such options are hereafter referred to as "stock group options.") The proposed rules provide for the clearance and settlement of stock group options transactions and the processing and settlement of stock group options exercises. In general, the OCC rules applicable to stock options will apply to stock group options as well, with such

exceptions as are specified in the proposed rule change. The format of the proposed stock group options rules is similar to that of OCC's existing rules pertaining to GNMA options and the proposed rules pertaining to other debt securities options and foreign currency options.

The proposed rule change would establish definitions applicable to stock group options, make adjustments in the margin requirements for stock options to accommodate multiple underlying stocks, and establish procedures for the settlement of stock group options exercises.

As currently proposed by the Exchanges, a single stock group option will cover 100 shares each of five or more different underlying stocks. All the stocks included in a group will meet the same criteria that are applicable to selection of stocks underlying options on single stocks. Exercise settlement and margining of stock group options will be fundamentally the same as for stock options. Adjustments to the terms of stock group options to account for stock splits, stock dividends, cash mergers, etc. involving one or more of the underlying stocks differ slightly from those applying to options on single stocks for technical reasons. Similarly, provisions relating to shortages in one or more of the underlying stocks are slightly different. In other respects, the By-Laws and Rules that are proposed to apply to stock group options do not differ, or differ very little, from the By-Laws and Rules presently governing the issuance, clearance, and settlement of stock options.

II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified below. OCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the trading of stock group options as heretofore proposed by the American Stock Exchange, the Chicago Board Options Exchange, and the Pacific Stock Exchange. The basic rules pertaining to margin on stock options and the Stock Clearing Fund, are also applicable to stock group options.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 because it would apply to stock group options substantially the same procedures and safeguards that have been used successfully by OCC in connection with stock options.

(B) Burden on Competition

OCC does not believe that the proposed rule change would have any material impact on competition.

(C) Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and no written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commissio, 450 5th Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted November 2, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 13, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-27986 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19074 SR-PCC-82-6]

Pacific Clearing Corporation ("PCC"); Order Approving Proposed Rule Change

On July 22, 1982, PCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, a proposed rule change that amends PCC Rule VI, § 1 regarding PCC's over-deposit requirement, one of PCC's safeguards against financial exposure due to participant default. That Rule currently provides that each PCC participant must maintain on deposit at PCC five percent of the value of its short positions, as marked to the market daily, less the amount of that participant's contribution to the Participants Funds. Under the proposed rule change, however, each participant's over-deposit requirement will equal five percent of the value of its short positions, as marked to the market on a daily basis; in calculating the over-deposit requirement, contributions to the Participants Fund will be ignored.

In its filing, PCC stated that the proposal furthers the purposes of Section 17A of the Act by enhancing PCC's ability to safeguard funds and securities in its possession and control. The proposed rule change will increase the amount of each participant's over-deposit requirement. As a result, the aggregate collateral required by PCC to satisfy the over-deposit rule will increase, which in turn will reduce the likelihood that PCC will need to assess the Participants Fund in the event of participant default.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of a Commission Release (Securities Exchange Act Release No. 18969, August 16, 1982) and by publication in the **Federal Register** (47 FR 36741, August 23, 1982). No comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulations pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-27987 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19097; File No. SR-NASD-82-11]

Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Code of Procedure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change on August 6, 1982, and an amendment thereto on September 28, 1982, which is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The substance of the proposed rule change is the establishment of a unified code of procedure almost exclusively drawn from previously approved provisions of the Code of Procedure for Handling Trade Practice Complaints, Rules of Fair Practice, and By-Laws of the Association. Upon its adoption, the Code would be the sole body of procedure governing disciplinary actions, member and associated person eligibility proceedings, and grievances concerning the NASDAQ System. Thus, the bulk of the proposed rule change is logistical, rather than textual.

A second category of change is designed to reflect more accurately current policies developed in light of experience since the adoption of the Code of Procedure for Handling Trade Practice Complaints. Within this category fall the enlargement of time to answer a disciplinary complaint; provision for additional time to file an answer when a complaint is amended; provision for additional time to respond to a second notice of complaint; adoption of a procedure concerning requests for a change of venue in disciplinary cases; adoption of a requirement of multi-member hearing panels; provision for the limited exchange of documentary evidence prior to a disciplinary hearing; provision that hearing panels control all procedural matters arising during the hearing; provision for the consolidation of complaints; and the provision that the employing member firm receive a copy of any decision involving an employee-applicant for SEC review in any proceeding.

A third category of changes is designed to achieve linguistic uniformity to the Code by the utilization of words and phrases contained in the Rules of Fair Practice, By-Laws, and the Securities Exchange Act of 1934. Within this category fall such terms as registered person, associated person and sanction; standardization of capitalization of words; and the specification of calendar or business day throughout the proposed Code.

Article I broadens substantially the purpose of the Code to be the unified body of procedure applicable to members, associated persons and others in disciplinary actions, eligibility proceedings and grievances concerning the NASDAQ System. The Article states that the By-Laws and Rules of Fair Practice prevail over the Code, and this Article also states that the National Business Conduct Committee has been delegated authority by the Board of Governors in disciplinary and other matters. The only substantive change in Article I is the expanded scope of the Code as an all encompassing body of procedure.

Article II describes the intra-NASD disciplinary process whereby cases commence at the level of the District Business Conduct Committee. The article provides detailed procedures for the processing of pleadings, notices, consolidation, withdrawal, and settlement of complaints, evidentiary and hearing rules, and requirements for the content of decisions. This article also provides two separate procedures for the resolution of apparent violations prior to the issuance of a complaint; admisssion, waiver and consent proceedings, as well as a summary complaint procedure.

Article II embodies the majority of substantive changes effected by the proposed Code. Section 2(b) of Article II authorizes withdrawal of complaints filed by District Business Conduct Committees upon approval by the National Business Conduct Committee. It also empowers a District Business Conduct Committee to file a complaint at a future date involving the same allegations.

Article II, Section 3(a) expands from 10 to 20 calendar days the period for a respondent to answer a complaint. Section 3(b) codifies existing practice providing an additional 10 calendar days to answer an amended complaint. Section 3(d) codifies existing practice which provides that in multi-respondent cases, all answers filed shall be distributed to all respondents.

Article II, Section 6(a) provides that the venue of a disciplinary hearing may be changed at the direction of the District Business Conduct Committee with the consent of the respondent, or upon the request of the respondent with the approval of the National Business Conduct Committee, or at the direction of the National Business Conduct Committee with or without the consent of the respondent.

Article II, Section 8(a) codifies the existing practice of making NASD hearing exhibits available prior to the hearing upon the request of a respondent prior to the hearing. Section 8(b) requires a respondent to submit its documentary evidence prior to the hearing for the purpose of expediting the hearing. Section 8(c) permits the receipt of additional documentary evidence at the time of the hearing at the discretion of the hearing panel and recognizes the right of both complainant and respondent to appear and be heard by counsel. Section 8(d) has been added to make clear that hearing panels control all procedural matters.

Article II, Section 10 empowers the District Business Conduct Committee to consolidate complaints involving common questions of law or fact and related evidence may be consolidated where such consolidation will result in savings of time and expense.

Article III describes the intra-NASD disciplinary process whereby certain actions of any District Business Conduct Committee may be appealed to or called for review by the National Business Conduct Committee on behalf of the Board of Governors. Section 3 of Article III incorporates provisions of Article II, Section 8 to hearings before the Board of Governors regarding pre-hearing exchange of documentary evidence, right of parties to appear and be represented by counsel, offering of additional documentary evidence, and the authority of hearing panels to control procedural matters. Article III also sets forth the right of those aggrieved by Board actions to petition the SEC for review.

Article IV incorporates by reference the sanctions provided by Article V,

Section 1 of the Rules of Fair Practice and does not involve any substantive change.

Article V provides a procedure for member and associated person eligibility proceedings. This article is based upon Article I, Section 13 of the By-Laws. The By-Law requirement of Section 13(c) that a hearing panel be composed of one District Business Conduct Committee member has been deleted in the proposed Code in order to allow greater flexibility in scheduling hearings and in recognition that the requirement is frequently waived.

Article VI provides a procedure for the summary supervision of a member or associated person and is based upon Part IX of Schedule C of the By-Laws. No substantive changes have been made to the existing procedure.

Article VII sets forth procedures on grievances concerning the NASDAQ System and is based upon Part VI of Schedule D of the By-Laws. No substantive changes have been made to the existing procedure.

Article VIII provides a procedure for complaints against members and associated persons for violations of NASDAQ Rules. Article VIII is based upon and combines the current procedures contained in Part VII and Part VIII of Schedule D of the By-Laws. Article VIII procedures complement those of Article II concerning disciplinary proceedings before the District Business Conduct Committee. No substantive changes have been made.

Article IX provides a procedure for Summary Limitation of Access to the NASDAQ System based upon present procedure set forth in Part IX of Schedule D of the By-Laws. No substantive changes have been made to the existing procedure.

Article X, Section 1 states the grounds of disqualification to participation in proceedings and is based upon existing Code Section 24 without any substantive change. Article X, Sections 2 and 3 carry forward without substantive change the existing requirement of Article IV, Section 5 of the Rules of Fair Practice regarding requests and examination of books and records and the sanction of suspension for failure to comply with this requirement. Article X, Section 4 states the procedure for enacting amendments to the Code of Procedure and is based upon Section 28 of the existing Code without substantive modification.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to conform the language of the amended and new provisions to the Securities Acts Amendments of 1975 and to reflect more accurately current policies.

The proposed amendments to the Code of Procedure are designed to fulfill the responsibility of the Association under Section 15A of the Securities Exchange Act of 1934, as amended, to "provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Association of any person with respect to access to services offered by the Association or a member thereof." It would reflect more accurately current policies and codify into the Code of Procedure all procedural provisions governing disciplinary matters, NASDAQ matters and eligibility deficiencies which are now found in various sections of the NASD Manual: in the Association's By-Laws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints. Because its function is broader than just handling trade practice complaints, those words have been deleted from the new title.

The proposed amendments will unify and clarify the Association's procedures thereby enhancing the level of understanding among members, associated persons and the public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed Code of Procedure will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received by the Association.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Association consents to an extension of the time period specified in Section 19(b)(2) of the Act until such time as the Association shall file an amendment which specifically states that the time period specified in Section 19(b)(2) shall begin to run on the date of filing such amendment.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization at 1735 K Street, N.W., Washington, D.C. 20006, (202) 728-8294 and at the district offices of the self-regulatory organization listed below:

District No. 1, One Union Square, Suite 1911, Seattle, Washington 98101, (206) 624-0790

District No. 2 North, 425 California Street, Room 1400, San Francisco, CA 94104, (415) 781-3434

District No. 2 South, 727 W. Seventh Street, Los Angeles, CA 90017, (213) 627-2122

District No. 3, 900 17th Street, Room 608, Denver, Colorado 80202, (303) 825-7234

District No. 4, 911 Main Street, #2230, Commerce Tower Building, Kansas City, Missouri 64105, (816) 421-3930

District No. 5, 1004 Richards Building, New Orleans, Louisiana 70112, (504) 522-6527

District No. 6, 1610 Metropolitan Federal Savings Building, 1407 Main Street, Dallas, Texas 75202, (214) 742-4103

District No. 7, 1100 Atlanta Center, 250 Piedmont Avenue, N.E., Atlanta, Georgia 30308, (404) 658-9191
District No. 8, Three First National Plaza, Suite 1680, Chicago, Illinois 60602, (312) 236-7222
District No. 9, 100 Erieview Plaza, Cleveland, Ohio 44114, (216) 694-4545
District No. 10, 1735 K Street, N.W., 9th Floor, Washington, D.C. 20006, (202) 728-8400
District No. 11, 1818 Market Street, 12th Floor, Philadelphia, Pennsylvania 19103, (215) 665-1180
District No. 12, Two World Trade Center, South Tower, 98th Floor, New York, New York 10048, (212) 839-6200
District No. 13, 50 Milk Street, Boston, Massachusetts 02109, (617) 482-0466

All submissions should refer to the file number in the caption above and should be submitted November 2, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 4, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-27993 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12700 812-5261]

Ohio National Life Insurance Co., et al.; Application For an Order Granting Exemptions Approving the Terms of Certain Offers of Exchange

In the matter of the Ohio National Life Insurance Company; Ohio National Variable Account A; Ohio National Variable Account B; and the O.N. Equity Sales Company, 237 William Howard Taft Road, Cincinnati, Ohio 45219.

Notice is hereby given that the Ohio National Life Insurance Company ("Ohio National"), a mutual life insurance company, Ohio National Variable Account A ("VA-A") and Ohio National Variable Account B ("VA-B"), separate accounts of Ohio National registered under the Investment Company Act of 1940 (the "Act") as unit investment trusts, and the O.N. Equity Sales Company ("Equity Sales"), a wholly owned subsidiary of Ohio National registered under the Securities Exchange Act of 1934 as a broker-dealer (hereinafter referred to collectively as "Applicants"), filed an application on August 3, 1982 and an amendment thereto of the Act, granting exemptions from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 26(a)(2)(D), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit the issuance and sale of variable annuity contracts with a contingent deferred sales charge and other charges described below and pursuant to Section 11 of the Act approving the terms of certain offers of exchange. All interest persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

In 1969, Ohio National established VA-A and VA-B for the purpose of funding variable annuity contracts. Ohio National now intends to subdivide VA-A and VA-B into equity sub-accounts, money market subaccounts and bond sub-accounts. According to the application Ohio National currently offers variable annuity contracts funded through VA-A and VA-B ("Current Contracts"). Ohio National now intends to issue a new series of multiple funded, flexible payment variable annuity contracts ("New Contracts"). New Contracts to be offered through VA-A are designed for use in connection with retirement plans qualifying for special income tax treatment under the Internal Revenue Code of 1954 (the "Code"). New Contracts to be offered through VA-B are designed for use in connection with retirement plans which may not so qualify. The New Contracts will permit contractowners to allocate their purchase payments among one or more sub-accounts of either VA-A or VA-B and to transfer values accumulated under the New Contracts from one sub-account to another. As with the Current Contracts, Applicants propose to provide for the imposition of a contingent deferred sales charge, as well as the other charges described below.

Sales and Administration Charges

According to the application, the New Contracts will permit purchase payments to be made from time to time at the discretion of the purchaser. Each purchase payment less any deduction for premium or other similar taxes will be allocated to one or more sub-accounts of VA-A or VA-B per the instructions of the contractowner. Applicants also represent that the New Contracts will permit contractowners to transfer, subject to certain conditions, at any time prior to the date upon which annuity payments begin and once each year thereafter, all or a portion of the value of the New Contract from one VA-A or VA-B sub-account to another. Ohio National will charge a transfer fee of $10 for each transfer to offset costs incurred in connection with executing and recording such transfers. If such costs exceed $10, Ohio National may increase the transfer fee to cover such added costs, but in no event may the transfer fee exceed $15.

According to the application, prior to the commencement of annuity payments, Ohio National will deduct on the contract anniversary from the accumulated value of each New Contract an annual administration charge of $30. This annual administration charge will also be deducted in full if a New Contract is surrendered on any date other than a contract anniversary. In addition, an administrative charge equal to 0.25% on an annual basis will be made from the accumulated value of the New Contract at the end of each valuation period. These charges are in addition to a $1.00 administrative charge deducted from purchase payments prior to allocation to the separate account. Applicants represent that such charges are intended to reimburse Ohio National for administrative expenses based upon Ohio National's current estimates of the costs of administering the New Contracts over their life time, are guaranteed never to be increased, and are not designed or expected to generate a profit.

Applicants state that no sales charge will be deducted from New Contract purchase payments as they are made. Instead, a contingent deferred sales charge will be assessed in some circumstances when a New Contract is surrendered or a partial withdrawal of the accumulation value is made prior to the annuity commencement date. The sales charge is intended to partially reimburse Ohio National for amounts paid by it to Equity Sales as compensation to Equity Sales for the sale of the New Contracts. Such charge will equal five percent (5%) of the lesser of (a) the amount surrendered or withdrawn or (b) the total of all purchase payments made within 96 months prior to the date of request for the surrender or partial withdrawal. In addition, the New Contracts will permit contractowners to withdraw once each year (after the first contract year) an amount equal to not more than 7% of the total value of the New Contract without the imposition of the sales charge.

Guarantee and Risk Charges

According to the application Ohio National guarantees that the dollar amount of each annuity payment made under the New Contract after the first such annuity payment will not be affected by (i) changes in mortality experience or (ii) increased expenses incurred in the administration of the New Contracts, and during the accumulation period that sales, expense and administrative charges will not exceed those set forth in the New

Contract. In addition, Ohio National guarantees that the contract value attributable to investment in the VA–A or VA–B money market sub-accounts will never decline due to the performance of the Fund's money market portfolio. Ohio National will also pay a lump sum death benefit if the annuitant dies prior to the annuity commencement date equal to the contract value or, if greater, the total purchase payment less any amounts previously withdrawn.

For assuming these risks, Ohio National, in determining the variable accumulation unit value and the annuity unit value of the New Contract, currently intends to deduct at the end of each valuation period an amount equal to 1.3% on an annual basis of the value of New Contracts invested in the equity or bond sub-accounts and 1.5% on an annual basis of the value of New Contracts invested in the money market sub-accounts. Of these risk charges, 0.2% in the case of the money market sub-accounts is for the risk associated with the investment guarantee. Ohio National estimates that a reasonable allocation of the remaining risk charge would be 0.8% for mortality risk and 0.5% for expense risk. The actual risk charges, which will be determined by the Board of Directors of Ohio National, may be decreased by Ohio National at any time but may not be increased more frequently than once annually. Applicants represent that the New Contracts provide that the total of these risk charges may not exceed 1.55% on an annual basis for the equity and bond sub-accounts and 1.75% on an annual basis for the money market sub-accounts. Ohio National believes that these charges are reasonably related to the actual risks incurred by it in connection with the New Contracts.

Section 6(c)

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, from the provisions of the Act and rules promulgated thereunder, if and to the extent that such exemption is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request exemptions pursuant to Section 6(c) from certain provisions of the Act as summarized below.

Sections 27(c)(2) and 26(a)

Section 27(c)(2), in relevant part, prohibits the issuer of a periodic payment plan certificate and any depositor or underwriter for such issuer from selling any such certificate unless the proceeds of all payments (other than sales load) are deposited with a qualified bank acting as trustee or custodian, and held under an agreement containing, in substance, the provisions required by Sections 26(a)(2) and 26(a)(3).

Section 26(a) requires that such an agreement must provide, *inter alia*, that the bank (i) shall have possession of all property of the unit investment trust and segregate and hold the same in trust subject only to the charges and collections specifically allowed under clauses (A), (B), and (C) of such section until distribution to the security holders of the trust; (ii) shall not resign until the trust has been liquidated or a successor trustee or custodian has been appointed; (iii) may collect from the income and, if necessary, from the corpus of the trust such fees for services provided for in the agreement; (iv) shall not be allowed as an expense any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

Applicants propose that they be granted exemptions from Sections 27(c)(2) and 26(a) to allow: (1) the assets of the Separate Accounts to be held in open account in lieu of actual share certificates by the Custodian, Hartford National Bank and Trust Company, under an agreement that does not create a trust with respect to the assets of VA–A or VA–B; (2) the deduction of the respective annual mortality, investment and expense risk charges; (3) the deduction of the flat annual administration charge; (4) the deduction of the annual .25 percent administration charge; (5) the imposition of the $15 transfer fee; (6) the deduction for premium taxes and (7) the deduction of the contingent deferred sales charge.

With respect to (1) above, Applicants represent that the assets of each of the Separate Accounts will be protected by the safeguards and conditions described in the application. With respect to (2) above, Applicants assert that the Mortality, Investment and Expense Risk Charge meets the standard set forth in Section 6(c) as it is reasonable compared to comparable products offered by other companies and reasonable in relationship to the risks assumed. Applicants state that a portion of the expense risk charge may be needed to cover distribution expenses not covered by the sales charge, depending upon the lapse and termination rates of the New Contracts. With respect to (3), (4), (5) and (6) above, Applicants assert that these charges have been set at levels no higher than the estimated actual costs of administering the contracts and without expectation of profit. Applicants assert that they have taken into account the added administrative costs attributable to recordkeeping and reporting requirements of the Tax Equity and Fiscal Responsibility Act of 1982 and the geographical dispersion of the anticipated individual purchasers. Applicants acknowledge and will disclose in the prospectus that imposition of an asset based administrative charge may result in owners of larger contracts bearing a portion of the costs of administering smaller contracts. However, Applicants assert that their experience is that owners of larger contracts tend to request more frequent administrative services. With respect to (7) above, Applicants assert that the new contracts limit the total of all contingent deferred sales charges which may be assessed against any one contract to a maximum of 5 percent of the total purchase payments made. Applicants also assert that the total of all fees and charges represents an amount that is consistent with the protection of investors and reasonable as compared to similar fees and charges imposed on competitive variable annuity products.

Sections 2(32), 2(a)(35), 22(c), 27(a)(3), 27(c)(1), 27(d) and Rule 22c–1

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) of the Act, in pertinent part, prohibits any registered investment company issuing periodic payment plan certificates, or any depositor or underwriter of such company, to sell any such certificate unless it is a redeemable security.

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Section 22(c) of the Act and Rule 22c–1 thereunder prohibit a registered investment company issuing redeemable securities, such as the Contracts, from selling, redeeming or repurchasing any such security except at a price based on

the current net asset value of such security.

Section 27(d) of the Act, in pertinent part, requires that any holder who surrenders his or her periodic payment plan certificate within eighteen months of issuance shall receive his or her account value plus an amount equal to the excess paid for sales expenses which exceed 15 percent of the purchase payments made.

Applicants assert that these provisions, to varying degrees, might be inconsistent with the proposed sales charges of the contracts and the imposition of the full annual administrative charge upon surrender, and therefore request an order exempting them from these provisions to the extent necessary to permit such charges as described above.

Request for Approval of Certain Offers of Exchange Pursuant to Section 11 of the Act

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company, or any principal underwriter for such a company, to make an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of exchange offer involving the securities of a registered unit investment trust.

As set forth above, Applicants propose that new contractowners be permitted to transfer all or part of their investment in one sub-account division of the Separate Accounts to another sub-account subject to certain limitations on the frequency and amount of transfers and the maximum $15 transfer charge. Applicants request approval pursuant to sections 11(a) and 11(c) of the Act to the extent requested to permit the transfers described in the contracts.

Notice is further given than any interested person may, not later than October 29, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the 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. 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 its 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. 82-27990 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12701; 812-5218]

Ohio National Life Insurance Co., et al.; Application Pursuant for an Order Exempting Certain Transactions and an Order Approving the Substitution of the Funding Media of Certain Variable Annuity Contracts

In the matter of the Ohio National Life Insurance Company, O.N. Fund, Inc., O.N. Market Yield Fund, Inc., the O.N. Equity Sales Company and O.N. Investment Management Company, 237 William Howard Taft Road, Cincinnati, Ohio 45219.

Notice is hereby given that O.N. Fund, Inc. ("O.N. Fund"), a diversified open-end management investment company, O.N. Market Yield Fund, Inc. ("Market Yield Fund"), a non-diversified open-end management investment company, The O.N. Equity Sales Company, a registered broker-dealer, and O.N. Investment Management Company ("O.N. Management"), the investment adviser for O.N. Fund and Market Yield Fund (hereinafter referred to collectively as "Applicants"), filed an application on June 18, 1982 and an amendment thereto on September 20, 1982 for an order pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting certain transactions, described below, from the provisions of Section 17(a) of the Act. In addition, Applicants and The Ohio National Life Insurance Company ("Ohio National"), a mutual life insurance company, pursuant to the same application requested an order pursuant to Section 26(b) of the Act approving the substitution of funding media of certain variable annuity contracts as described below. 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.

In 1969, Ohio National established, under the laws of the state of Ohio, Ohio National Variable Account A ("VA-A") and Ohio National Variable Account B ("VA-B") as separate accounts of Ohio National for the purpose of funding variable annuity contracts. Ohio National Variable Interest Account ("VIA") was similarly established in 1980 for the purpose of funding variable interest annuity contracts (VA-A, VA-B and VIA variable contracts are collectively referred to as the "Contracts"). The Contracts are offered pursuant to registration statements filed under the Securities Act of 1933. Assets of VA-A and VA-B are invested in shares of O.N. Fund. Assets of VIA are invested in shares of Market Yield Fund.

A proposal by Ohio National to merge O.N. Fund and Market Yield Fund and create a "series" company was presented to the Boards of Directors of Market Yield Fund and O.N. Fund for their consideration. According to the application, although such boards are composed of the same five individuals, meetings were separately convened to discuss the proposal from the point of view of each fund, and on March 18, 1982 the proposal was unanimously adopted by each Board. The application states that on June 3, 1982, after considering the potential advantages and projected expenses, each Board, acting separately, unanimously declared advisable the proposed merger.

On the same day, O.N. Fund and Market Yield Fund entered into an Agreement of Merger and Plan of Reorganization (the "Plan") pursuant to which O.N. Fund would be merged into Market Yield Fund. In accordance with Maryland law, Market Yield Fund, which will be the surviving fund, will assume all of O.N. Fund's assets and liabilities. The Plan provides that the Articles of Incorporation of Market Yield Fund, whose name will be changed to Ohio National Fund, Inc. (the "Fund"), will be amended as of the effective date of the merger to divide the Fund's capital stock into three portfolios: an equity portfolio, consisting of the assets of O.N. Fund; a money market portfolio, consisting of the assets of Market Yield; and a newly-created bond portfolio. On the effective date of

the merger each share or fractional part thereof of O.N. Fund then outstanding will be converted into an equal number of shares of the equity portfolio and each share or fractional part thereof of Market Yield Fund then outstanding including, as the surviving fund, shares held by it as treasury stock will be converted into and become an equal number of shares of the money market portfolio.

According to the application, the proposed merger of O.N. Fund and Market Yield Fund will be submitted for approval to the shareholders of each fund. In accordance with Maryland law, approval will require a vote of at least two-thirds of the shares of each fund entitled to vote thereon. Currently, Ohio National owns 100% of the outstanding shares of both O.N. Fund and Market Yield Fund, and it is obligated to vote these shares in accordance with the voting instructions received from VA–A, VA–B and VIA contractowners. Applicants submit that they will solicit such instructions pursuant to a copy of the funds' proxy statements as filed with the Commission.

Applicants state that at the time that contractowners are asked to give instructions with respect to the merger, they will also be asked to instruct Ohio National how to vote with respect to a proposed new investment advisory agreement between the Fund and O.N. Management. Currently, O.N. Management charges O.N. Fund an annual fee based upon O.N. Fund's average daily net assets during each quarterly period as follows: 0.5% of the first $25,000,000 of net assets; 0.4% of the next $50,000,000 of net assets; and 0.3% of net assets over $75,000,000, and it charges Market Yield Fund an annual fee of 0.5% of Market Yield Fund's average daily net assets, with both funds' payments subject to a 1% expense limitation. Applicants contemplate that the new investment advisory agreement will provide for an annual fee based upon combined average daily net assets of each of the Fund's portfolios which under no circumstances will be greater than: 0.5% of the first $100,000,000 of net assets; 0.4% of the next $150,000,000 of net assets; and 0.3% of net assets over $250,000,000. Applicants state that they believe that this fee schedule is fair and reasonable when compared to those of comparable funds. Applicants also state that the fee schedule, by providing a sliding scale fee for the combined portfolios, will allow each individual portfolio to benefit from a breakpoint reached as a result of increases in the net assets of the other portfolios and will permit transfers to be made between portfolios without affecting the advisory fee payable by any one portfolio.

The merger is also conditioned upon the receipt of the requested exemptive orders and upon receipt of a ruling by the Internal Revenue Service or an opinion of counsel to the effect that the transaction will constitute a tax-free reorganization and that no gain or loss will be recognized by O.N. Fund or Market Yield Fund or their shareholders as a result of the transaction.

All expenses associated with the merger will be borne by the contemplated equity, bond, and money market portfolios. However, Applicants represent that in no event shall expenses exceed the following: $17,500 for the equity portfolio; $17,500 for the bond portfolio; and $35,000 for the money market portfolio. O.N. Management has agreed to bear all expenses associated with the merger which exceed $70,000.

Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, knowingly to sell to or purchase from such investment company any security or other property. Section 17(b) of the Act provides, in pertinent part, that notwithstanding Section 17(a) of the Act, a person may file with the Commission an application for an order exempting a proposed transaction from the provisions of Section 17(a). Section 17(b) of the Act further provides that the Commission shall grant such application if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Applicants state that since (i) the Boards of Directors of O.N. Fund and Market Yield Fund are composed of the same five individuals, (ii) the same persons serve as the officers of both funds and occupy the same positions with both funds, (iii) O.N. Investment Management Company is the investment adviser to both funds, and (iv) Ohio National owns 100% of both funds, O.N. Fund and Market Yield Fund may be deemed to be under "common control" and, therefore, "affiliated persons" of each other as that term is defined in Section 2(a)(3)(C) of the Act. Applicants also state that since the proposed merger may be deemed to involve the purchase and sale of securities and other property between affiliated registered investment companies, it may, unless exempted, be deemed to violate Section 17(a) of the Act.

Applicants represent that the primary reason for the merger and reorganization is to simplify administration of the funding vehicles for the separate accounts by substituting a single fund, consisting of separate portfolios, for several separately registered investment companies, thereby reducing expenses charged to contractowners and lowering the expense ratio of each fund by eliminating the duplicative costs of managing separate investment companies. Specifically, Applicants anticipate that the merger will result in a reduction of such duplicative expenses as are incurred in connection with shareholder meetings, the preparation of reports both for the Commission and for contractowners, legal and auditing fees, Boards of Directors meetings, custodial expenses and other administrative costs. Applicants project that O.N. Fund will save approximately $8,000 in expenses and Market Yield Fund will save approximately $12,000 in expenses during the first twelve calendar months following the merger and that continued savings are expected to be realized annually.

Applicants also represent that the merger will also enable Ohio National to offer variable annuity contracts with a wider choice of funding media. New contracts proposed to be offered by Ohio National will provide contractowners with the right to transfer their account values among the separate portfolios of the Fund. The proxy statement to be sent to existing contractholders discloses that such transfer rights will not be available to owners of previously issued contracts. However, Applicants state that existing contractowners may obtain transfer rights by purchasing the new multiple-funded contract which will offer such rights.

Based on the facts and circumstances presented, Applicants submit that the requested exemption is warranted, that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company and with the general purposes of the Act. Moreover, Applicants assert that the merger is also consistent with the policies of each fund, whose investment objectives will be preserved as the investment objectives of the respective

portfolios of the Fund, since no sale of portfolio securities is contemplated solely by reason of the merger. In addition, Applicants point out that a majority of the Board of Directors of each fund, including a majority of the disinterested directors of each fund, has determined to recommend the merger to such fund's shareholders.

Section 26(b) of the Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall issue an order approving such substitution based on the evidence that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants and Ohio National submit that Section 26(b) was intended to protect against the unilateral substitution by a depositor or trustee of a unit investment trust of the securities of another issuer without the approval of the shareholder. In such an instance, the Congress was concerned that the only remedy available to the shareholder would be to redeem his or her shares, and perhaps incur another sales load in connection with investing those proceeds in another fund. Here, Applicants and Ohio National point out, any such substitution will occur only after shareholder approval of the merger has been obtained. Accordingly, Applicants and Ohio National assert that the abuse which Section 26(b) was intended to prevent is not present in the circumstances herein.

Applicants and Ohio National assert that the Commission's staff has considered the question of whether Section 26(b) of the Act applies to mergers similar to that contemplated and that, where the staff has found that the substitution was the result of a merger which required shareholder approval and in which shareholders could vote in accordance with their proportional ownership of the shares of the investment company underlying the unit investment trust, the staff has granted requests for a "no-action" position. Applicants and Ohio National submit that similar protections are afforded herein, through the shareholder vote and the review by the Commission of this exemptive application, and, accordingly, believe that an order approving the substitution is warranted.

Notice is further given that any interested person may, not later than October 29, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a sttement as to the natue of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants and Ohio National at the address stated above. Proof of such service (by affidavit or, in the case of any attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following October 29, unless the Commission thereafter orders a hearing upon request or upon its 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. 27994 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

Savin Corp.; Application and Opportunity for Hearing

Notice is hereby given that Savin Corporation (the "Applicant") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of J. Henry Schroder Bank & Trust Company ("Schroder") under certain existing indentures of the Applicant, which are qualified under the Act, 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 Schroder from continuing to act as successor trustee under the Applicant's indentures.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, 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 shall 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, that trusteeship under such qualified 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 such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant had outstanding as of July 31, 1982, $40,000,000 of its 14% Subordinated Debentures due August 1, 2000 (the "14% Debentures") issued under an indenture dated as of August 1, 1980 (the "1980 Indenture"), between the Applicant and Chemical Bank ("Chemical") which was qualified under the Act. The 14% Debentures were registered under the Securities Act of 1933.

2. The Applicant had outstanding as of July 31, 1982, $60,000,000 of its 11¾% Subordinated Debentures Due Ocotober 1, 1998 (the "11¾% Debentures") issued under an indenture dated as of October 1, 1978 (the "1978 Indenture") between the Applicant and Manufacturers Hanover Trust Company ("Manufacturers") which was qualified under the Act. The 11¾% Debentures were registered under the Securities Act of 1933. The 1980 Indenture and the 1978 Indenture each contain the provisions required by Section 310(b)(1)(ii) of the Act.

3. On August 19, 1982 Schroder was appointed successor trustee under the 1978 Indenture.

4. The Applicant appointed Schroder to act as successor trustee under the 1980 Indenture on August 20, 1982. The Tripartite Agreement among the Applicant, Chemical and Schroder, dated as of August 20, 1982, by which Schroder was appointed successor trustee under the 1980 Indenture and accepted its appointment thereunder provides that, if the Commission does not issue an order under Section 310(b)(1)(ii) of the Act that Schroder is not disqualified from acting as successor trustee prior to November 18, 1982, Schroder shall resign, and upon such resignation by Schroder, the applicant shall promptly appoint Chemical as successor trustee under the 1980 Indenture and Chemical shall accept such appointment.

5. The Applicant is not in default under either of the indentures.

6. The Applicant's obligations under the indentures and the debentures issued thereunder are wholly unsecured and rank *pari passu inter se*. There are no material differences between the 1980 Indenture and the 1978 Indenture except for variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interest rates, redemption prices and sinking fund provisions.

7. In the opinion of the Applicant, the provisions of the aforementioned indentures are not so 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 of the debentures issued under such indentures to disqualify Schroder from continuing to act as successor trustee under the 1980 Indenture and the 1978 Indenture.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

Notice is further given that any interested person may, not later than October 26, 1982, submit to the Commission his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication 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 reasons for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request the hearing or advice as to whether the hearing is ordered will receive all notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after such 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. 82-27989 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth A. Fogash—202-272-2142. Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Amendment

Form Regulation 13D-G (Schedules 13D and 13G) No. 270-137.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of approval Regulation 13D-G (Schedule 13D and Schedule 13G), as proposed to be amended, under the Securities Exchange Act of 1934. In addition, the Commission has submitted for clearance amendments to Rule 13d2-b under the Exchange Act affecting the use of Schedule 13G. Schedules 13D and 13G provide a basis for the Commission to fulfill its statutory responsibility to ensure that holders of publicly-traded securities receive adequate information concerning potential changes in, or influence upon, control of the issuer of such securities.

Submit comments to OMB Desk Officer: Robert Veeder 202-395-4814.

Dated: September 24, 1982.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 82-27988 Filed 10-8-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Meeting; Public Meeting Notice

The U.S. Small Business Administration Region IX will hold a public meeting at 12:30 P.M., on Wednesday, November 3, 1982, at the Los Angeles Hilton Hotel, Studio Room, 930 Wilshire Boulevard, Los Angeles, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Miss Irenemaree Castillo, Regional Administrator, U.S. Small Business Administration, 450 Golden Gate Avenue, Box 36044, San Francisco, California 94102; telephone: Area Code (415) 556-7487.

Dated: October 5, 1982.

Jean M. Nowak,

Acting Director.

[FR Doc. 82-28005 Filed 10-8-82; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, will hold a public meeting at 9:30 a.m. on Tuesday, October 19, 1982 and Wednesday, October 20, 1982, at the Harley Hotel of Pittsburgh, 699 Rodi Road, Pittsburgh, Pennsylvania 15235 (Monroeville), to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary M. Merman, District Director, U.S. Small Business Administration, 960 Penn Avenue, Convention Tower, Fifth Floor, Pittsburgh, Pennsylvania 15222, (412) 644-4306.

Dated: October 5, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82-28006 Filed 10-8-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/562]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting on November 10, 1982, of the Working Group on Transborder Data Flows of the Advisory Committee on International Investment, Technology, and Development. The Working Group will meet from 10:00 a.m. to 12:00 noon. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public.

The purpose of the meeting will be to report on the results of ICCP meetings held in September, 1982, the meeting of the U.N. Committee for Transnational Corporations, and to discuss preparations of a U.S. paper for the U.N. Centre on Transnational Corporations.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be

reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Working Group will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: September 28, 1982.

John T. McCarthy,

Acting Executive Secretary.

[FR Doc. 82-27867 Filed 10-8-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/563]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting on Wednesday, November 3, 1982, at 9:30 A.M., in room 3201 of the U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of this meeting is to finalize preparations for the 49th Session of the Council of the International Maritime Organization (IMO) which is scheduled for November 15-19, in London. In particular, the SHC will discuss development of U.S. positions dealing with inter alia, the topics:

Reports of the Various Committees.

Financial Matters.

Assessment of IMO Contributions.

Introduction of the Arabic Language.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. G. P. Yoest, U.S. Coast Headquarters (G-CPI), 2100 2nd Street, SW, Washington, D.C. 20593. Telephone: (202) 426-2280.

Dated: September 20, 1982.

Gordon S. Brown,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82-27868 Filed 10-8-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/564]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Panel on Bulk Cargoes under the SOLAS Subcommittee Working Group on Containers and Cargoes will conduct an open meeting on Wednesday, November 17, 1982, at 10:00 A.M., in room 3201 of the U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington, D.C. 20593.

The purpose of the meeting is to review progress of position papers preparation for presentation at the Twenty-fourth Session on Containers and Cargoes to be held at IMO Headquarters in London. Particular comments will be directed to the Code of Safe Practice of Bulk Cargoes including Appendix B entries for Ammonium Nitrate, Fumigation of Grain Charcoal, Coal, Direct Reduced Iron Ore Concentrates and Zinc Ashes.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. John F. McAulty, U.S. Coast Guard (G-MTH), Washington, D.C. 20593. Telephone: (202) 426-1577. Or contact Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, New York 10048. Telephone: (212) 432-1280.

Dated: September 27, 1982.

Gordon S. Brown,

Chairman, Shipping Coordinating Committee.

[FR Doc. 82-27869 Filed 10-8-82; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/561]

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 4 at 10:00 a.m. in Room 1406 of the Department of State, 2201 C Street, N.W., Washington, D.C.

The purpose of the meeting is to review preparations for the upcoming Meeting of CCITT Study Group VIII, Geneva, November 16-26, 1982.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to November 4, members of the general public who plan to attend the meeting so advise Mr. William Lowell, Office of International Communications Policy, Department of State, Washington, D.C. 20520, telephone (202) 632-6583. All attendees must use the C Street entrance to the building.

Dated: September 24, 1982.

Gordon L. Huffcutt,

Director, Office of International Communications Policy.

[FR Doc. 82-27866 Filed 10-8-82; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-82-20]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, 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 must be received on or before: November 1, 1982.

ADDRESS: Send comments on any 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: 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), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 28, 1982.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23294	Suburban Airlines	14 CFR Portions of Part 121	To permit petitioner to operate certain turbine-powered aircraft with 30 seats or less in scheduled service under Part 121 and to permit operation of these aircraft without the installation of a flight data recorder, a cockpit voice recorder, and ground proximity warning equipment.
23299	Bell Helicopter Textron	14 CFR § 133.1(b) & 133.45(a)(3)	To permit petitioner to exercise the Dallas/Fort Worth Metroplex Helicopter Emergency Lifesaver Plan which involves lifting personnel in a suspended Billy Pugh safety net.
23263	Chaparral Airlines	14 CFR § 121.667	To permit petitioner to operate its aircraft under Visual Flight Rules using company flight following and company radio communications in lieu of filing a flight plan.
23298	Gannett Company, Inc	14 CFR Subpart D of Part 91	To permit petitioner to operate its Bell 206B helicopter under Subpart D.
23293	Air National	14 CFR § 121.311(F)	To permit petitioner to operate its DC-9 aircraft without each flight attendant having a seat for takeoff and landing that meets the requirements of § 25.785.
18104	Flight Safety Int'l	14 CFR § 61.57(a)(7)	Extension of Exemption No. 2592 to permit petitioner to accomplish the biennial flight review in an aircraft simulator, by specific aircraft type, instead of in an aircraft.
23334	Spirit Airways, Inc	14 CFR § 135.117	To allow the gate attendant/ticket agent of petitioner to perform the passenger-preflight briefing before the passengers board the aircraft.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought; Disposition
22469	Parks College of St. Louis University	14 CFR Part 141	To amend Exemption No. 3495, which permits persons enrolled in Parks College degree program to graduate from individual Part 141 courses when they have been trained to a performance standard but have not yet met the minimum flighttime requirements (except for solo crosscountry time), to allow the same privilege to persons not enrolled in a degree program. Denied Sept. 17, 1982.
23180	Mr. Douglas A. Cahill	14 CFR § 61.161(b)	To permit petitioner to apply for an airline transport pilot certificate with a rotorcraft category rating without meeting the requirement that he have at least 1,200 hours of flight time within the preceding 8 years. Granted Sept. 17, 1982.
23221	Martin N. Bunker	14 CFR § 121.383(c)	To allow petitioner to continue to serve as a pilot under Part 121 beyond the date of this 60th birthday. Denied Sept. 17, 1982.
23271	Robert G. Chaille	14 CFR § 121.383(c)	To allow petitioner to continue to serve as a pilot under Part 121 beyond the date of his 60th birthday. Denied Sept. 20, 1982.
23143	Courtney Bennett	14 CFR § 121.383(c)	To allow petitioner to continue to serve as a pilot under part 121 beyond the date of his 60th birthday. Denied Sept. 20, 1982.
23338	Spantax, S.A	14 CFR Portions of Parts 21 & 91	To permit petitioner to operate a leased U.S.-registered DC-10-30 aircraft using the master minimum equipment list and a maintenance and inspection program developed by Air Florida. Granted Sept. 21, 82.
17544 et al	Robert N. Rockwell et al	14 CFR § 121.383(c)	To permit petitioners to continue to serve as pilots in air carrier operations after reaching their 60th birthday. Denied Sept. 21, 1982.
23231	ALM Antillean Airlines	14 CFR Portions of Parts 21, 43, & 91	To permit petitioner to use the McDonnell Douglas Corporation master minimum equipment list for its leased DC-9-80 aircraft. Withdrawn Sept. 9, 1982.
23210	Omniflight Airways, Inc. d./b./a. Chesapeake and Potomac Airways, Inc.,	14 CFR § 135.261	To allow petitioner to operate its helicopters in a hospital emergency evacuation service without complying with the duty time limitations. Granted Sept. 23, 1982.
20378	Beckett Aviation Corp	14 CFR § 61.58	Extension of Exemption No. 3067 to permit pilot trainees of petitioner to complete the entire 24-month pilot-in-command check in an FAA-approved simulator provided that the pilot taking the flight check has completed three landings within the preceding 90 days in that type aircraft. Granted Sept. 21, 1982.
23191	Amerford Int'l Inc., d.b.a. Amerford Airways, Inc.	14 CFR § 135.5	To permit petitioner to operate as an air taxi/commercial operator (ATCO) without having its own ATCO operating certificate when using a wet-leased aircraft. Granted Sept. 22, 1982.
22708	40-Mile Air	14 CFR § 135.261(a)	To allow petitioner to operate its aircraft between June and October 1982 without complying with flight time limitations for crewmembers during any 24-consecutive-hour period of time. Denied Sept. 22, 1982.

[FR Doc. 82-27871 Filed 10-8-82; 8:45am]
BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Executive Steering Committee of the Federal Aviation Administration (FAA) National Airspace Review Advisory Committee. The agenda for this meeting is as follows:

Opening Remarks

Presentation of Task Group Staff Studies, including recommendations

Task Group 1–1.1—Military Operations Areas;
Task Group 1–2.1—Terminal Control Areas;
Task Group 1–4.1—Weather Programs;
Task Group 1–5.1—Facility Shutdown Agreement;
Task Group 1–5.2—Canadian Airspace Redefinition;
Task Group 1–6.1—VFR Charts.

Discussion

DATE: October 26, 27, 28, 1982, 10:00 a.m. to 4:00 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, room 1010, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., AAT–30, Washington, D.C. 20591 (202) 426–3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Air Traffic Service, AAT–1, 800 Independence Avenue, SW., Washington, D.C. 20591, by October 22, 1982. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on October 6, 1982.

R. J. Van Vuren,

Executive Director, NARAC.

[FR Doc. 82–28003 Filed 10–8–82; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Announcement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: This document announces that the Internal Revenue Service will change the status of the present Chief Counsel's Office in Honolulu.

DATES: This change in status is be to effective October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph H. Hairston, Director, Operations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, D.C. 20224, 202–566–4148, not a toll-free call.

Announcement:

As a result of the increasing legal casework in the State of Hawaii, the Chief Counsel of the Internal Revenue Service, will change the status of the present office in Honolulu from a sub-office of the District Counsel, San Francisco, Western Region, to a regular office to be known as the District Counsel, Honolulu, Western Region effective October 12, 1982.

Joel Gerber,

Deputy Chief Counsel.

[FR Doc. 82–28009 Filed 10–8–82; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to Section 10 of Public Law 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on October 26 and 27, 1982, of the following debt management advisory committee:

Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association, U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on October 26 and the preparation of a written report to the Secretary of the Treasury on October 27, 1982.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commerical or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may or may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: October 5, 1982.

Roger W. Mehle,

Assistant Secretary (Domestic Finance).

[FR Doc. 82–27962 Filed 10–8–82; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin H. Cohen, Special Assistant to the Director, Office of Personnel, United States Information Agency, 1776 Pennsylvania Ave., N.W., Washington, D.C. 20547 (202) 724–9633.

SUPPLEMENTARY INFORMATION: In accordance with Section 4314(c)(1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the following list of alternate members amends the International Communication Agency Notice (47 FR 38211) effective August 30, 1982.

The following USIA SES career members shall be available for service on the Agency's Performance Review Board in the event that any of the regular members are not available.

Angie Garcia, Director, Office of Personnel.

Stanley Silverman, Director, Office of the Comptroller.

Gilbert A. Robinson,

Deputy Director, U.S. Information Agency.

[FR Doc. 82-27947 Filed 10-8-82; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB, for review, the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35). The notice contains one extension. The notice lists the following items of information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number; (4) How often the form must be filled out; (5) Who will be asked or required to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about these items should be directed to the VA's OMB Desk Officer, Karen Sagett, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

By direction of the Administrator.

Dated: October 4, 1982.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Category: Extension—

(1) Office of Personnel & Labor Relations.

(2) Inquiry Concerning Applicant for Employment.

(3) VA Form Letter 5-127.

(4) Nonrecurring.

(5) Individuals who have knowledge of an applicant's qualifications, work performance, character.

(6) 50,000 responses.

(7) 12,500 hours.

(8) No.

[FR Doc. 82-27946 Filed 10-8-82; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, N.W., Washington, D.C. on November 30, 1982, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director for Environmental Medicine (102), Room 848, Department of Medicine and Surgery, Veterans Administration Central Office, Washington, D.C. 20420 (Telephone: (202) 389-5411).

By direction of the Administrator.

Dated: September 29, 1982.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 82-27910 Filed 10-8-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 197
Tuesday, October 12, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 2:30 p.m., Wednesday, October 20, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 701-TA-190 [Preliminary] (Nitrocellulose from France)—briefing and vote.
6. Investigation 731-TA-107 [Preliminary] (Melamine from Brazil)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1449-82 Filed 10-7-82; 2:46 pm]

BILLING CODE 7020-02-M

2

LEGAL SERVICES CORPORATION

Joint Meeting of the Special Committee on Grant and Contract Procedures and the Provision of Legal Services Committee

TIME AND DATE: 9:30 a.m.-4 p.m., Saturday, October 16, 1982.

PLACE: Airport Hilton, North Ballroom, Indianapolis International Airport, 2500 South High School Road, Indianapolis, Indiana 46241.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED: (1) Functions, operations, and funding of the following organizations as pretains to the Legal Services Corporation:

(a) The National Clients Council
(b) The National Legal Aid and Defender Association
(c) The Coalition for Legal Services
(d) The Project Advisory Group
(e) The Reginald Heber Smith Fellowship Program.

(2) Functions and operations of LSC Regional Offices.

CONTACT PERSON FOR MORE INFORMATION: Anne Tracy, Office of the President (202) 272-4040.

Dated: October 6, 1982.

Clinton Lyons,

Acting Vice President and Chief Executive Officer.

[S-1443-82 Filed 10-7-82; 9:12 am]

BILLING CODE 6820-35-M

3

PAROLE COMMISSION

TIME AND DATE:

9 a.m.-5:30 p.m., Thursday, October 21, 1982.

9 a.m.-5:30 p.m., Friday, October 22, 1982.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting of July 21-22, 1982.
2. Reports from the Chairman, Vice Chairman, Commissioners, General Counsel, Director of Research, and Case Operations.
3. Presentation on victims of crime by Lois Herrington, Chairperson, President's Task Force on the Victims of Crime.
4. Consideration of a proposed major revision of the Commission's parole guidelines at 28 CFR 2.20 and public comment thereon.
5. Consideration of a proposed revision of the Commission's reparole guidelines at 28 CFR 2.21 and public comment thereon, if any.
6. Consideration of a proposed revision of the Commission's rule at 28 CFR 2.30 broadening the Commission's rescission authority and public comment thereon, if any.
7. Proposed rule concerning representation of inmates before the Commission by former government employees. Proposed procedures for persons considering functioning as inmate representatives, and for hearing examiners in dealing with inmate representatives.
8. Proposed revision of Procedures Manual at § 2.24-08 concerning modifications of recommended decisions.
9. Discussion of performance of community service as a condition of parole and related issues.
10. Discussion of treatment of inmates whose cooperation with the government was unrewarded.

CONSENT AGENDA: The following consent agenda items, only if previously requested to be opened for discussion at the meeting on or before October 15, 1982:

11. Declassification of certain original jurisdiction cases.
12. Rules and Procedures Manual Amendments—82/1 dated May 20, 1982.
13. Rules and Procedures Manual Amendments—82/2 dated August 12, 1982.
14. Rules and Procedures Manual Amendments—82/3 dated September 10, 1982, concerning YCA offenders, resulting from the case of *Watts* v. *Hadden*.
15. Rules and Procedures Manual Amendments—82/4 dated September 20, 1982, to avoid false imprisonment situations.
16. Rules and Procedures Manual Amendments—82/5 dated September 28, 1982, dealing with the voting requirement for decisions under the guidelines.

CONTACT PERSON FOR MORE INFORMATION: Mr. Peter B. Hoffman, Director of Research, United States Parole Commission (301) 492-5980.

[S-1450-82 Filed 10-7-82; 2:46 pm]

BILLING CODE 4410-01-M

4

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required that the previously announced open meeting on September 23, 1982 include an additional item, which was opened to public observation:

Semiannual Agenda of Regulations

The previously announced items were:

1. Policy regarding Corporate Federal Credit Union Chartering Guidelines.
2. Delegation of Authority on Matters Involving Corporate Credit Unions.
3. Proposed Interpretive Ruling and Policy Statement: Statutory Lien—Enforcing Lien By Applying Shares Directly to Defaulted Loan Without First Getting a Court Judgment.
4. Review of Central Liquidity Facility Lending Rate.
5. Policy to allow unclaimed shares in liquidations to be trusteed to the States at full value.
6. Final Rule: Deregulation of "Organizing a Federal Credit Union," "Standard Form of Bylaws," "Amendment of Bylaws and Charters." Parts 701.1, 701.3 and 701.4 of NCUA Rules and Regulations.
7. Final Rule: Part 721, Insurance and Group Purchasing Activities.

The meeting was held at 9:30 a.m., in the Whitehall Room, Omni Hotel, 16th Street and Biscayne Blvd., Miami, Florida.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

[S–1447–82 Filed 10–6–82; 4:42 pm]

BILLING CODE 7535–01–M

5

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, October 13, 1982

PLACE: Seventh floor board room, 1776 G Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rate.

2. Declaration of Central Liquidity Facility dividend for fourth quarter ending September 30, 1982.

3. Determine method of reimbursement to Central Liquidity Facility Agent Members for administrative costs.

4. Application of Constitution Corporate Credit Union (Connecticut) for Central Liquidity Facility Agent Membership.

5. Amend the corporate Federal credit union standard bylaw amendment for Article III, Section 5(a) of the Federal Credit Union Bylaws to permit member credit unions to reduce their reservable liabilities under Regulations D by amounts maintained in daily accounts at corporate credit unions.

TIME AND DATE: 10:15 a.m., Wednesday, October 13, 1982.

PLACE: Seventh floor board room, 1776 G Street, N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Requests from Federally insured credit unions for special assistance to prevent liquidation under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

2. Personnl Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357–1100.

[S–1446–82 Filed 10–6–82; 4:42 pm]

BILLING CODE 7535–01–M

federal register

Tuesday
October 12, 1982

Part II

Environmental Protection Agency

Hazardous Waste Management System

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 262, 264, and 265

[SW-FRL-2156-5]

Hazardous Waste Management System: Standards Applicable to Generators of Hazardous Waste and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) is today proposing amendments to its hazardous waste regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA). These amendments would replace the annual reporting requirements for hazardous waste generators and owners and operators of hazardous waste treatment, storage, and disposal (TSD) facilities with a biennial survey of representative samples of those populations. This approach will provide verifiable data on a wider range of topics, better serve EPA's long term regulatory needs under RCRA, and reduce significantly the information burden on the regulated community.

DATE: Comments on these proposed amendments are due on or before November 26, 1982.

ADDRESSES: Comments on these amendments should be sent to the Docket Clerk (Docket 3002/3004–RCRA Survey), Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

The public docket for this rulemaking is available at Room S–269, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9346 (toll-free), or in Washington, D.C. (202) 382–3000.

For technical information, contact Robert B. Axelrad, office of Solid Waste, (WH–562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460, (202) 382–5218.

SUPPLEMENTARY INFORMATION:

Preamble Outline:

I. General Authority.
II. Background.
A. Annual Reporting Requirements.
B. Delayed Compliance Date.
III. Biennial Survey Approach.
A. Information Needs.
B. Summary of Survey Process.
C. Rationale For Surveys Instead of Annual Reports.
D. Initial Survey.
E. Frequency of Survey.
F. Confidentiality of Information.
G. Elimination of Reporting Exemptions.
H. Cooperation With States.
IV. Conforming Amendments.
A. Annual Report Forms.
B. Groundwater Monitoring Reporting.
C. State Authorization.
V. Executive Order 12291.
VI. Paperwork Reduction Act.
VII. Regulatory Flexibility Act.
VIII. Request for Comments.

I. General Authority

Today's proposed amendments are issued under Sections 2002, 3002, 3004, and 3007 of the Solid Waste Disposal Act, as amended by Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

Section 3002 (6) requires generators of hazardous waste to submit reports at such times as the EPA Administrator deems necessary, setting out the quantities of hazardous wastes generated and their disposition. Section 3004 (2) of RCRA requires EPA to establish requirements respecting satisfactory reporting from hazardous waste TSD facilities. In addition, Section 3007(a) permits EPA to require any person who generates, treats, stores, disposes, or otherwise handles (or had handled) hazardous waste to furnish information to the Agency upon request. Information may only be requested under Section 3007, however, if it is to be utilized in the development of the RCRA regulatory program or in enforcing the provisions of Subtitle C.

The existing annual report requirements were promulgated under the authority of Sections 3002 and 3004 . The requirement to respond to biennial surveys will be issued under the authority of Sections 3002 and 3004 as well as under the authority of Section 2002(a) (general rulemaking authority) and Section 3007. Section 3007 does not require EPA to go through rulemaking to require reporting. However, since one of the purposes of the biennial survey is to comply with the requirement in Section 3002 and 3004 that EPA issue regulations establishing reporting standards for generators and treatment, storage, and disposal (TSD) facilities, EPA is proposing the survey as a regulation.

EPA's primary reason for adding Section 3007 to the authorities relied on is that the biennial survey may seek information that EPA cannot require to be submitted under Sections 3002 and 3004. Section 3007 contains no limitations on the kinds of data that the Agency can collect concerning hazardous waste, as long as the data are to be used for regulatory development or enforcement purposes.

Second, under Section 3007, EPA may seek information from handlers located in States granted interim or final authorization. The validity of national statistics rests upon EPA's ability to obtain uniform information from handlers located in all States, regardless of whether EPA or the State administers the RCRA program. Sections 3002 and 3004 do not permit EPA to obtain information directly from handlers located in interim or final authorized States; thus, EPA also will gather the information it needs under the authority of Sections 3007 and 2002(a).

II. Background

A. Annual Reporting Requirements

In February and May of 1980, EPA promulgated regulations establishing the reporting requirements authorized by Sections 3002(6) and 3004(2) of RCRA. Under 40 CFR § 262.41, generators who ship hazardous wastes off-site are required to submit reports annually by March 1 for the reporting year ending the previous December 31. The reports are to specify, among other things, the amount of each type of hazardous waste shipped to each TSD facility during the reporting year, as well as the names, addresses, and EPA identification numbers of all transporters utilized in such shipments. Under 40 CFR § 264.75 and § 265.75, the owners or operators of hazardous waste TSD facilities must submit annual reports specifying, among other things, the amount of each type of hazardous waste received from each generator from which the facility received hazardous waste during the reporting year.

Annual reports from generators and all TSD facilities would have been due March 1, 1981, covering the reporting period from November 19, 1980, when the RCRA regulations took effect, through December 31, 1980. However, on January 26, 1981, EPA suspended the reporting requirements for the 1980 reporting year (46 FR 8395) because the Agency concluded that it would not be adequately prepared by March 1, 1981 to collate, analyze, and make use of the data from the reports, given the heavy workload the Agency was experiencing in the initial phase of the RCRA regulatory program.

B. Delayed Compliance Date

In 1981, EPA began to reevaluate this reporting requirement in light of EPA's current and future information needs. This review led EPA to conclude that a biennial survey approach was preferable to the existing annual report requirement. EPA delayed the compliance date for this requirement from March 1, 1982, to August 1, 1982 (47 FR 7841, February 23, 1982) to provide the Agency with time to propose and promulgate the appropriate amendments. Today's proposal is intended to accomplish this purpose. The current status of this requirement, pending completion of this rulemaking, is described in a separate notice in today's **Federal Register**.

III. Biennial Survey Approach

A. Information Needs

In order to carry out its responsibilities adequately under RCRA, EPA needs certain information to determine the extent of the hazardous waste problem nationwide, set priorities for addressing those problems, and determine the nature and direction of future regulatory development. Specifically, EPA needs to know: how much hazardous waste is being generated, where (generally) it is being generated; where hazardous wastes are being shipped for treatment, storage, and disposal; the nature of the disposition of such wastes; and the nature and extent of the nation's capacity to treat, store, and dispose of regulated hazardous wastes. In addition, the Agency will need data on specific topics to support future rulemaking activity.

The annual report requirement was intended to provide a summary of some of this information (which would otherwise be available only through a compilation of generator and TSD facility logs and other sources) through across-the-board reporting by all generators and TSD facilities. However, the Agency now proposes a more efficient and more reliable way of obtaining more specific information through a biennial survey of statistically valid samples of generators and TSD facilities.

B. Summary of the Survey Process

EPA is proposing a statistical sampling approach that would provide better, more reliable data at lower cost than the annual report. Specifically, we are proposing to survey approximately 10 percent of the population of hazardous waste generators and TSD facilities once every two years.[1]

In order to obtain more precise statistics, a stratified sample will be drawn from the total population of generators and TSD facilities located in all 50 States, including those located in States granted interim or final authorization to administer their own hazardous waste regulatory programs under RCRA. The samples may be stratified according to handler characteristics (such as size, location, and type of industry) which appear to contribute significantly to variation within the generator and TSD facility populations. Stratification will help ensure sufficient numbers of responses within each handler category to produce reliable descriptive statistics with minimal margins of error. Sample strata may vary, depending upon the nature of the specific information required by the Agency in any given year. Varying the sample selection criteria also will help the Agency spread out the information burden over time.

Separate survey forms containing distinct data requests will be mailed to generators and to TSD facilities. EPA will provide assistance in completing the survey forms through the RCRA hotline.

EPA intends to follow-up the survey mailings with telephone and mail reminders to those who don't answer the survey. EPA can pursue cases of persistent non-response through the use of compliance letters and other enforcement actions authorized under Section 3008.

EPA may conduct telephone interviews and inspections with subsets of the sample populations to verify the accuracy of the survey responses. The survey forms will be designed to facilitate data validation. In addition, information submitted in survey responses will be cross-checked against EPA's existing profiles of the regulated community (such as the Section 3010 handler notification and the TSD facility Part A permit application data bases) to identify inaccurate or misleading responses. Such data validation procedures are essential to the production of reliable statistics.

C. Rationale for Surveys Instead of Annual Reports

EPA's proposal to replace the annual reporting requirements with a biennial survey is based on three factors. The survey will provide: (1) More detailed information; (2) better national data; and (3) reduced paperwork burdens.

The survey approach will yield more information because the Agency intends to ask for more detailed information in the surveys than it would have through the annual report. For example, the first survey of TSD facilities will ask for cost information and detailed descriptions of technologies, in addition to the data the annual report would provide on the types and quantities of wastes received. The generator survey will obtain data on hazardous waste use, recycling, and reclamation in addition to data the annual report would have collected on each off-site facility to which waste was shipped and the types and quantities of wastes generated.

The survey approach will provide better national data on the generation, storage, treatment, and disposal of hazardous waste because it will cover handlers in all States rather than only those handlers located in unauthorized States. The current annual reporting requirements allow EPA to collect annual reports only from handlers located in States without interim or final authorization to conduct their own hazardous waste programs. Because of the low (and diminishing) number of States that remain unauthorized, the annual report would not provide EPA with the national data it needs to adequately characterize hazardous waste management trends. Although EPA conceivably could require authorized States to provide EPA with the data the States collect through their own annual reports, the variety of forms and data processing systems used by the States would probably preclude timely and efficient data analysis.

Finally, EPA will be able to reduce substantially the paperwork burdens associated with its information collection activities without impairing the data base. Generally, only 10% of the regulated community would have to take the time to complete the biennial survey forms following completion of this rulemaking, and they will be required to do so only half as frequently.

We have considered three other major issues in proposing a survey approach: compliance incentives, enforcement value, and State information needs. These will be discussed in detail below.

1. *Compliance Incentives.* We considered whether the survey approach provides adequate incentives for owners or operators to comply with recordkeeping requirements. The sample survey approach does provide such incentives.

First, since any handler may be chosen as part of the sample, all

[1] The generator sample generally would be less than 10 percent, the TSD sample more than 10 percent, and the average for facilities and generators together approximately 10 percent. However, sample sizes may vary from year to year.

handlers must be prepared when surveyed to provide the Agency with detailed information describing their hazardous waste operations, based upon accurate, up-to-date records. Second, there is a greater incentive to respond accurately to the surveys since the smaller respondent population will increase the chance that an individual survey response will be verified by EPA by telephone or by a site visit. EPA and States will be inspecting large numbers of facilities each year. Inspectors regularly check for evidence of improper or inadequate recordkeeping on the part of owners and operators. Failure to maintain proper recordkeeping represents grounds for enforcement actions at either the State or federal level.

2. *Enforcement Value.* Perceived values of the annual report as an enforcement tool include: a) across-the-board information on each and every TSD facility, and b) the evidentiary value of a signed statement certifying the accuracy of the data obtained from each generator and TSD facility. The latter statement could be used as evidence of criminal intent in legal proceedings.

EPA does not believe that substituting a biennial survey for the annual report eliminates an important enforcement tool. One reason is that all of the information required in the annual report will still be available in generator and TSD facility operating logs, manifests and permit applications. Second, specific generators or facilities known to have past compliance problems could be included in future survey sample populations. (Of course, EPA would not include responses from these facilities or generators when estimating statistics for the general population.) Finally, survey respondents still must sign certified statements attesting to the accuracy of the information in the survey.

3. *State Information Needs.* Replacing the annual report with a biennial survey will not prohibit States from obtaining additional data on hazardous waste handlers in their States. RCRA does not prohibit States from establishing more stringent requirements than the federal regulatory program.

In addition, EPA intends to make available to the States all information obtained regarding the generation of hazardous waste and its treatment, storage, and disposal to the extent permitted under EPA's business confidentiality regulations. (Section H, Cooperation with States, contains a more complete discussion of potential areas for State and federal cooperation in the survey process.)

D. Initial Survey

During the summer of 1982, EPA is conducting a major survey of the generator and TSD facility populations in support of its Regulatory Impact Analyses (RIAs) on the RCRA regulations. These RIAs are being prepared under Executive Order 12291.

The RIA survey will cover the 1981 reporting year and provide a substantially improve data base on actual hazardous waste management practices and operations. This data base will be updated and improved in subsequent surveys.

The RIA survey queationnaires are considerably longer and more complex than the forms that will be used for the surveys conducted after 1982. However, they will allow the Agency to test the survey process, including the sampling design, survey procedures, and follow-up activities. Thus, EPA will be able to resolve technical problems in the survey instrument and thereby increase the reliability and utility of the data collected in future years.

E. Frequency of Surveys

Although EPA is today proposing to replace the current annual report with a survey of generators and TSD facilities conducted once every two years, the Agency is considering whether surveys to be conducted either more of less frequently would better satisfy the Agency's information needs. EPA believes that it may be possible to reduce the frequency of the surveys to once every three years without sacrificing the reliability of the information available to the Agency for regulatory decisions. This would further reduce the burden on the regulated community. The option is also available of conducting an annual survey, thereby minimizing the possibility the EPA would be acting on incomplete or out-of-date information, The Agency seeks specific public comment on the frequency of future surveys: should they be annual, biennial, triennial, or some other frequency?

F. Confidentiality of Information

Survey respondents will be able to assert claims of business confidentiality covering part or all of the information submitted to the Agency. Procedures for making such claims are set forth in 40 CFR 2.203(b). Information covered by a claim of business confidentiality will be disclosed by EPA only as permitted by Subpart B of 40 CFR Part 2 (41 FR 36902, September 8, 1978, and 44 FR 17673, March 23, 1979). If no claim of business confidentiality is asserted at the time the requested information is furnished to the Agency, the information contained in the survey responses may be made public without prior notice.

G. Elimination of Reporting Exemptions

The existing annual reporting requirements exempt generators who treat, store, or dispose of hazardous waste on-site or who only ship hazardous waste off-site to TSD facilities that they own or operate. Since all of the information that these generators would have submitted in generator reports would also have been submitted by them in their TSD facility reports, EPA saw no reason to require such firms to file two duplicative reports.

Today's proposed amendments would remove this reporting exemption because the data the be supplied by generators and by TSD facilities are not duplicative. Generator survey forms will request data on the nature and amount of hazardous wastes generated, while TSD facility survey forms will request data on the disposition of such wastes, and the capacity for such disposition. Respondents selected as both a generator and a TSD facility would receive one combined survey form.

H. Cooperation With States

EPA intends to collect, collate and store survey data in ways that facilitate the sharing of information and information collection resources with States. After completing the RIA survey this fall, the Agency intends to make available to State governments all information obtained regarding the generation of hazardous waste and its treatment, storage, and disposal to the extent permitted under 40 CFR 2.305(h)(3) (EPA's business confidentiality regulations). States may be particularly interested in information pertaining to hazardous waste activities within their own boundaries, and within contiguous States. EPA hopes to provide such information to interested State in both raw (copies of survey forms) and compiled form.

EPA also intends to explore the potential for federal/State cooperation in the conduct of fature surveys. The RIA survey will test the Agency's survey methodology using a sample population large enough to provide reliable national and regional statistics describing hazardous waste generation and its treatment, storage, and disposal. EPA envisions the possibility of entering into cooperative agreements with interested States to expand its sample size in future surveys where State-specific statistics are desired.

Under one possible approach, an interested State could provide funding for the incremental costs the Agency would incur in drawing a larger sample from that State. This approach might be attractive to States since the incremental costs of expanding the sample size would be significantly less than the costs that would be incurred if the States were to gather all of the data themselves. Furthermore, interested States also could request that EPA obtain additional data from handlers sampled in their States.

EPA, however, is limited in the extent to which it can collect information desired by the States. Since the EPA surveys will rely in part upon Section 3007 of RCRA, the Agency can only obtain information from handlers in authorized States if the information is intended for use in the development and enforcement of the RCRA regulatory program. However, where States have independent authority to require reporting, it may be possible for surveys to be developed under the joint authority of State and federal law.

EPA seeks specific public comment on the issue of federal/State cooperation in the survey process. In particular, the Agency seeks comment on the possibility of obtaining data directly from States as a means of reducing the frequency of EPA surveys.

IV. Conforming Amendments

EPA is also proposing a number of minor amendments to bring all of EPA's existing RCRA regulations into conformance with the survey proposal.

A. Annual Report Forms

The proposed amendments to 40 CFR Part 262.41 would delete the annual report forms (EPA Forms 8700–13 and 8700–13B) and their associated instructions.

The annual report forms and instructions contained in the TSD facility regulations at 40 CFR Parts 264 and 265 (EPA Forms 8700–13 and 8700–13B, contained in Appendix II to each Part) will not be deleted, however. The Agency is maintaining them in the Code of Federal Regulations since they also serve as the Unmanifested Waste Report forms (Part C of each form), required for use by facility owners and operators under 40 CFR 264.76 and 265.76. EPA intends to revise the Unmanifested Waste Report Forms, pending an analysis of their utilization by facility owners and operators. The annual report forms may be removed from the TSD facility regulations or altered as necessary upon completion of review by EPA.

B. Ground-Water Monitoring Reporting

Section 265.94 currently requires owners and operators of surface impoundments, landfills, and land treatment facilities to submit annual ground-water monitoring data and analyses as part of, or attached to, their annual reports to EPA's Regional Administrators. Since the annual reports will no longer be required of such owners and operators, EPA is proposing to have the § 265.94 ground-water monitoring data submitted independently to Regional Administrators by March 1 of each year, the date that the original annual report would have been submitted. This proposed action does not affect the nature of the data required to be submitted.

C. State Authorization

The final group of conforming amendments would revise the State program regulations in 40 CFR Part 123 in two ways. First, the amendments would reflect that EPA will be exercising its RCRA Section 3007 authority to collect information in States granted interim or final authorization. The regulations detailing the components of the Memoranda of Agreement, to be signed by such States and EPA prior to the granting of interim and final authorization, would be revised to add provisions acknowledging that EPA will be engaging in such activities.

The Agency recognizes that many of these Memoranda have already been signed. The intent of today's proposal is simply to clarify the roles of the States and EPA in the administration of the survey program. As such, EPA does not see these amendments as requiring at this time any additions to State programs already in place. Future Memoranda of Agreement will include today's proposed acknowledgement provisions, and existing Memoranda may be revised to include such provisions in the course of other changes to their provisions. The absence of such provisions will not prevent the Agency from conducting any of the activities included in today's proposed amendments.

Second, 40 CFR 123.34, 123.36, and 123.28 would be amended to provide specific guidance on how EPA will determine whether State reporting requirements implementing Sections 3002 and 3004 are equivalent or substantially equivalent to the survey requirement. The proposed amendments give the States the flexibility to conduct surveys, to continue to require annual reports, or to develop other mechanisms to gather the necessary data concerning the generation and disposal of hazardous waste.

V. Executive Order 12291

In accordance with Executive Order 12291, EPA has determined that today's proposed revisions of the RCRA regulations will not result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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. Therefore, today's proposed amendments are not subject to the major rule provisions of the Executive Order and no regulatory impact analysis is required.

These proposed amendments have been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. OMB's comments, and EPA's responses will be made available for public inspection at the Office of Solid Waste Docket (see addresses, above, for location and public hours).

VI. Paperwork Reduction Act

The RIA survey forms have been approved by the office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000–0424. The forms intended for use in future surveys will be submitted to OMB for review under the PRA.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare regulatory flexibility analysis for all proposed rules to assess their impact on small entities. No regulatory analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The economic impact of this regulation will be to reduce the costs of complying with EPA's hazardous waste management regulations for generators of hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this proposed rule will not have a significant economic

impact on a substantial number of small entities.

VIII. Request for Comments

EPA seeks public comment on all aspects of these amendments and on all of the issues discussed in this preamble. In particular, the Agency is interested in the public's views concerning the frequency and scope of future surveys.

If EPA completes this rulemaking before March 1, 1983, and if, after considering all comments received on this proposal, the Agency decides to amend the annual report requirement by replacing it with a requirement for a biennial survey, it is EPA's intent to make such amendments effective immediately. The practical effect of this action would be that EPA would not collect a 1982 annual report.

Because such amendments would reduce reporting requirements for most facilities, EPA does not believe that making them effective immediately would cause undue hardship. However, the Agency seeks comment on this issue, particularly in light of requirements of Section 553 of the Administrative Procedures Act (requiring that regulations take effect no earlier than 30 days after date of promulgation) and Section 3010(b) of RCRA (requiring that revisions to RCRA Subtitle C regulations take effect six months after date of promulgation).

List of Subjects

40 CFR Part 122

Administrative practice and procedure, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Confidential business information.

40 CFR Part 123

Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

40 CFR Part 262

Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 264

Environmental Protection Agency, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Environmental Protection Agency, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: September 30, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 262—STANDARDS FOR GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 reads as follows:

Authority: Secs. 2002 (a), 3001, 3002, 3003, 3004, 3005, and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978, (42 U.S.C. 6912(a), 6921, 6922, 6923, 6924, 6925, 6927).

2. 40 CFR 262.40(b) is revised to read as follows:

§ 262.40 Recordkeeping.

* * * * *

(b) A generator must keep a copy of each Exception Report for a period of at least three years from the date of the report.

* * * * *

40 CFR 262.41 is revised to read as follows:

§ 262.41 Biennial surveys.

The Administrator shall conduct a biennial survey of a sample of the population of generators and establish a date by which the response is due. The first survey will cover the 1983 calendar year. The Administrator shall determine in each survey year the number of such generators to be surveyed and the information to be collected

4. The Appendix to 40 CFR Part 262, entitled Appendix—Form—Annual Report (EPA Form 8700–13), and the associated section entitled General Instructions, Hazardous Waste Report (EPA Form 8700–13), are removed from the Code of Federal Regulations.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation of Part 264 reads as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C 6905, 6912(a) and 6924).

6. 40 CFR 264.75 is revised to read as follows:

§ 264.75 Biennial surveys.

The Administrator shall conduct a biennial survey of a sample of the population of facility owners and operators and establish a date by which the response is due. The first such survey will cover the 1983 calendar year. The Administrator shall determine in each survey year the number of such owners and operators to be surveyed and the information to be collected.

7. 40 CFR 264.77 is revised to read as follows:

§ 264.77 Additional reports.

In addition to submitting the discrepancy reports and unmanifested waste reports described in §§ 264.72 and 264.76, the owner or operator must also report to the Regional Administrator releases, fires, and explosions as specified in § 264.56(j)

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

8. The authority citation for Part 265 reads as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

9. 40 CFR 265.75 is revised to read as follows:

§ 265.75 Biennial surveys.

The Administrator shall conduct a biennial survey of a sample of the population of facility owners and operators. The first such survey will cover the 1983 calendar year. The Administrator shall determine in each survey year the number of such owners and operators to be surveyed and the information to be collected.

10. 40 CFR 265.77 is amended by revising the introductory text to read as follows:

§ 265.77 Additional reports.

In addition to submitting the discrepancy reports and unmanifested waste reports described in §§ 265.72 and 265.76, the owner or operator must also report to the Regional Administrator:

* * * * *

11. 40 CFR § 265.94 is amended by revising (a)(2)(ii) and (iii) and (b)(2) to read as follows:

*

§ 265.94 Recordkeeping and reporting.

(a) * * *

(2) * * *

(ii) Annually: Concentrations or values of the parameters listed in § 265.92(b)(3) for each ground-water monitoring well, along with the required evaluations for these parameters under § 265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with § 265.93(c)(1). During the active life of the facility, this information must be submitted no later than March 1st following each reporting year.

(iii) No later than March 1st following each reporting year: results of the evaluations of ground-water surface elevations under § 265.93(f), and a description of the response to that evaluation, where applicable.

(b) * * *

(2) Annually, until final closure of the facility, submit to the Regional Administrator a report containing the results of his or her ground-water quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the ground water during the reporting period. This information must be submitted no later than March 1st following each reporting year.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM; THE HAZARDOUS WASTE PERMIT PROGRAM; AND THE UNDERGROUND INJECTION CONTROL PROGRAM

12. The authority citation for Part 122 read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

13. 40 CFR 122.26 is amended by revising(a)(3)(v) and (c)(3)(v) and (vi) to read as follows:

§ 122.26 Permits by rule.

* * * * *

(a) * * *

(3) * * *

(v) 40 CFR § 264.75, Biennial surveys; and

* * * * *

(c) * * *

(3) * * *

(v) 40 CFR 264.75, Biennial surveys;

(vi) 40 CFR 264.76, Unmanifested waste report; and

* * * * *

14. 40 CFR 122.28 is amended by removing paragraph (e)(3).

PART 123—STATE PROGRAM REQUIREMENTS

15. The authority citation for Part 123 reads as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300 (f) et seq.; and Clean Water Act, 33 U.S.C. 1251 et seq.

16. 40 CFR 123.6 (d) is amended by adding paragraph (d)(6), to read as follows:

§ 123.6 Memorandum of Agreement with the Regional Administrator.

* * * * *

(d) * * *

(6) EPA may conduct biennial surveys of generators and facility owners and operators located in States with approved programs.

* * * * *

17. 40 CFR 123.34(b) is revised to read as follows:

§ 123.34 Requirements for generators of hazardous waste.

* * * * *

(b) The State shall have authority to require and shall require all generators to comply with recordkeeping and reporting requirements equivalent to those under 40 CFR 262.40 and 262.41. States must require that generators keep these records at least three years. Reporting requirements shall be considered equivalent to 40 CFR 262.41 if States, on a biennial basis, require the submission of information concerning the types and quantities of wastes generated and the dispostion of such wastes.

* * * * *

18. 40 CFR 123.36(h) is amended to read as follows:

§ 123.36 Requirements for hazardous waste management facilities.

* * * * *

(h) Inspections, monitoring, recordkeeping, and reporting. Reporting requirments shall be considered equivalent to 40 CFR § 264.75 if States, on a biennial basis, require the submission of information concerning the types and quantities of wastes received by hazardous waste management facilities and the disposition of such wastes;

* * * * *

19. 40 CFR 123.126 (b) is amended by adding a new paragaph (b)(8), to read as follows:

§ 123.126 Memorandum of Agreement.

* * * * *

(b) * * *

(8) A provision acknowledging that EPA may conduct surveys of generators and facility owners and operators located in States with approved programs.

* * * * *

20. 40 CFR 123.128(b)(3) is revised to read as follows:

§ 123.128 Program requirements for interim authorization for Phase I.

* * * * *

(b) * * *

(3) The State shall have the authority to require and shall require all generators covered by the State program to comply with reporting and recordkeeping requirements substantitally equivalent to those found at 40 CFR 262.40 and 262.41. Reporting requirements shall be considered substantially equivalent to 40 CFR 262.41 if States, on a biennial basis, require the submission of information concerning the types and quantities of hazardous waste generated and the disposition of such wastes.

* * * * *

21. 40 CFR 123.128(e)(6) is revised to read as follows:

(e) * * *

(6) Inspection, monitoring, recordkeeping and reporting. Reporting requirements shall be considered substantially equivalent to 40 CFR § 265.75 If States, on a biennial basis, require the submission of information concerning the types and quantities of wastes received by hazardous waste management facilities and the disposition of such wastes;

* * * * *

[FR Doc. 82-27817 Filed 10-8-82; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[SW-FRL-2158-5]

Hazardous Waste Management System: Standards Applicable to Generators of Hazardous Waste and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice concerning compliance dates.

SUMMARY: EPA is today clarifying the status of three reporting and recordkeeping requirements under Subtitle C of the Resource Conservation and Recovery Act. These requirements concern:

(1) The submission of 1981 annual reports by hazardous waste generators and owners or operators of hazardous waste treatment, storage, and disposal (TSD) facilities;

(2) The submission of quarterly ground-water monitoring data for surface impoundments, landfills, and land treatment facilities during the initial year of ground-water monitoring; and

(3) The preparation of ground-water quality assessment program outlines for surface impoundments, landfills, and land treatment facilities.

Today's notice explains that all three requirements are now in effect.

EFFECTIVE DATE: October 12, 1982.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9346 (toll free), or in Washington, D.C. (202) 382–3000.

For technical information contact: Robert B. Axelrad, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382–5218.

SUPPLEMENTARY INFORMATION:

I. Background

Under Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6921 *et seq.*, EPA has promulgated regulations establishing a comprehensive regulatory program for the management and control of hazardous waste (40 CFR Parts 260–267 and 122–124). As part of these regulations, generators of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal (TSD) facilities in unauthorized states [1] are required to prepare annual reports on their hazardous waste management activities and submit them to the EPA Regional Administrator by March 1 of the following year (40 CFR 262.41, 264.75, and 265.75). Annual reports covering the 1981 reporting year were originally required to be submitted to EPA Regional Administrators by March 1, 1982.[2]

In addition, the regulations require owners or operators of surface impoundments, landfills, and land treatment facilities to implement a ground-water monitoring program by November 19, 1981 (40 CFR 265.90). Owners or operators are required during the initial year of their monitoring programs to conduct quarterly analyses (40 CFR 265.92(c)) to characterize, among other things, the suitability of the ground water in the uppermost aquifer as a drinking water source (40 CFR 265.92(b)(1)). Within 15 days after the completion of each quarterly analysis, owners or operators in unauthorized states are required to report to EPA Regional Administrators the concentrations or values of the observed parameters specified in Appendix III to 40 CFR Part 265 for each ground-water monitoring well (40 CFR 265.94(a)(2)(i)). Appendix III includes most of the chemical constituents in the National Interim Primary Drinking Water Regulations. As part of these reports, owners or operators must separately identify for each monitoring well any parameter whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III.

Finally, as part of the ground-water monitoring regulations, owners or operators of certain TSD facilities were required to prepare an outline of a ground-water quality assessment program by November 19, 1981 (40 CFR 265.93(a)).

On February 23, 1982, EPA postponed the compliance date for these three requirements until April 1, 1982 (47 FR 7841).

II. Purpose of This Notice

The purpose of this notice is to clarify the current status of the three reporting requirements discussed above. It is being issued in response to two developments. First, as discussed in Section III.A., below, the Office of Management and Budget (OMB) has recently approved the forms for the 1981 annual report under the Paperwork Reduction Act (PRA). This notice explains the effect of OMB's action.

Second, on July 28, 1982, the Environmental Defense Fund (EDF) filed a petition with EPA requesting that the Agency "put the Annual Report and ground-water assessment outline (as well as the quarterly ground-water monitoring reports) back into effect on August 1." (Pet. at p. 7). The petition also requests that EPA advise the regulated community, through a **Federal Register** notice, of their duty to comply with each of these requirements. This notice responds to EDF's petition.

III. Current Status of Requirements

A. 1981 Annual Report Requirement

The requirement to submit an annual report covering the 1981 calendar year took effect under RCRA on August 1. However, because OMB has not cleared the annual report form under the PRA as of August 1, it is EPA's opinion that the reports were not required to be submitted on that date. The Agency advised persons who called EPA during July to ask about the status of the report that it would not be due unless and until OMB clearance was obtained.

On September 20, 1982, EPA received OMB clearance for the report forms under the PRA (OMB clearance number 2050–0005). Accordingly, the reports must now be submitted to the Agency. EPA recognizes, however, that many persons may not have prepared such reports because they were waiting for an EPA announcement concerning OMB approval of the report forms. To provide a reasonable amount of time for EPA to print and distribute the report forms and for the regulated community to complete and submit them,[3] EPA is today announcing that it will not take enforcement action against any generator or TSD facility for failure to submit the 1981 annual report if such report is mailed to the Regional Administrator for the Region where the

[1] Handlers located in states that have been authorized by EPA to operate their own hazardous waste programs must comply with state requirements in lieu of the Federal hazardous waste regulations.

[2] The requirement to submit an annual report covering the 1980 calendar year was permanently suspended on January 26, 1981 (46 *FR* 8395).

[3] EPA has made minor modifications in the format of the annual report forms published in the **Federal Register** on May 19, 1980. At least sixty days before January 10, 1982, EPA will be mailing copies of these modified forms to generators and owners and operators of TSD facilities who have notified under Section 3010 of RCRA and are located in states or territories which had not received Phase I interim authorization as of September 20, 1982, (NY, NJ, WV, MI, OH, MN, NM, MO, CO, WY, SD, NV, HI, WA, ID, AK, DC, Guam, N. Marianas, Virgin Islands, Puerto Rico, and American Samoa). Persons may also obtain copies of the forms from the RCRA hotline, (800) 424–9346 (toll-free) or 382–3000 (in Washington, D.C.).

generator or facility is located by [insert date 90 days after date of publication].

B. Quarterly Ground-Water Monitoring Reports

As in the case of the annual report, the requirement that owners or operators of TSD facilities in unauthorized states report to EPA the results of quarterly ground-water monitoring analyses went into effect on August 1, 1982. EPA has received OMB clearance for these reports under the PRA (OMB clearance number 2000–0423). Therefore, the first two quarterly reports, originally due to be submitted to EPA Regional Administrators on March 6 and June 3, 1982, were required to be submitted on August 1, 1982, the third quarterly report was due September 3, 1982. Persons who have not yet submitted these reports should do so now. The final quarterly report is due as originally scheduled (December 4, 1982).

C. Ground-Water Quality Assessment Program Outlines

The requirement that owners or operators of certain TSD facilities prepare an outline of a ground-water quality assessment program went into effect on August 1, 1982. The assessment outline requirement has been cleared by OMB (OMB clearance number 2000–0423). Therefore, TSD facilities should now have on site an assessment program plan outline, as described in 40 CFR 265.93(a).

IV. Executive Order 12291

EPA has determined that this notice is not a "rule" or "regulation" under Section 1 of Executive Order 12291, and therefore is not required to be submitted to OMB for review under the Order. However, in keeping with the objectives of the Order, EPA has sent this notice to OMB for comment.

This document establishes compliance dates for the following sections:

§§ 262.41, 264.75, 265.75, 265.94(a)(2)(i), and 265.93(a).

List of Subjects

40 CFR Part 262

Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 264

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

40 CFR Part 265

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

Dated: September 30, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

[FR Doc. 82-27818 Filed 10-8-82; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
October 12, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Special Permanent Performance Standards for Anthracite Mines in Pennsylvania

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 820

Special Permanent Performance Standards for Anthracite Mines in Pennsylvania

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is revising the permanent program regulations that implement Section 529 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revision reflects changes in the anthracite environmental protection provisions adopted by the Commonwealth of Pennsylvania since August 3, 1977, and is being made effective retroactively to July 31, 1982, the same date that the State program for Pennsylvania took effect.

EFFECTIVE DATE: July 31, 1982.

ADDRESSES: See "Supplementary Information" below for addresses where copies of documents associated with this rulemaking are available for public inspection and copying.

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

SUPPLEMENTARY INFORMATION:

I. Availability of Copies

Revisions to the anthracite environmental protection provisions, adopted by the Commonwealth of Pennsylvania since August 3, 1977, and public comments received on this rulemaking are available for public inspection and copying at:

Office of Surface Mining Reclamation and Enforcement Administrative Record, Room 5315, 1100 L Street NW., Washington, D.C. 20240, Telephone: (202) 343–7895.

Office of Surface Mining Reclamation and Enforcement, Pennsylvania Field Office, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101.

Pennsylvania Department of Environmental Resources; Fulton Bank Building, 10th Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

II. Background

On March 13, 1979, OSM promulgated permanent program regulations (44 FR 15281) as required by Section 501(b) of SMCRA (30 U.S.C. 1201 *et seq.*). 30 CFR Part 820 of the permanent regulatory program contains special performance standards for anthracite mines in the Commonwealth of Pennsylvania. The environmental protection provisions in force on August 3, 1977, in that State for anthracite mining were adopted by OSM in accordance with Section 529 of SMCRA.

The legislative history of SMCRA confirms that Congress intended that OSM adopt the State environmental protection provisions applicable to anthracite surface coal mines and the surface effects of anthracite underground mines. [See H.R. Rept. No. 94–1445, 94th Cong., 2nd Sess. 125–126 (1976); H.R. Rept. No. 94–896, 94th Cong., 1st Sess. 207 (1975).] SMCRA also requires that changes in the State's regulation of anthracite mining shall be reflected in the regulations that OSM promulgates.

III. Discussion of Final Rule

OSM is amending 30 CFR 820.11 to reflect changes in the Commonwealth's anthracite mining program since August 3, 1977, in accordance with Section 529 of SMCRA. Subsequent to August 3, 1977, the Commonwealth of Pennsylvania adopted revisions to the Administrative Code of 1929, the Coal Refuse Disposal Control Act, the Surface Mining Conservation and Reclamation Act, the Clean Streams Law, Chapters 86 and 88 of Title 25, Pennsylvania Code, and rescinded Chapters 99, 100 and 125 of Title 25, Pennsylvania Code as a part of its effort to obtain primary responsibility for regulating surface coal mining and reclamation activities and coal exploration activities on non-Federal and non-Indian lands in the anthracite region of the Commonwealth.

The revised statutes and regulations mentioned above were submitted to OSM by Pennsylvania as part of its program resubmission of January 25, 1982 (Administrative Record No. PA 292). On January 29, 1982, at 47 FR 4318–4320, OSM published a notice in the **Federal Register** announcing a public hearing and public comment period on the resubmitted Pennsylvania program. The public hearing was held in Harrisburg, Pennsylvania on February 25, 1982, and the public comment period on the resubmission closed on March 3, 1982. The Secretary's decision to approve conditionally the Pennsylvania State program was announced on July 30, 1982 (47 FR 33050–33080).

By separate action, the Office of the Federal Register published a document listing materials that had been approved for incorporation by reference into Titles 24 and 28 through 41 of the Code of Federal Regulations (46 FR 33980–33994, June 30, 1981). This listing contained revisions to 30 CFR 820.11 which reflected amendments to Pennsylvania's anthracite mining statutes adopted by the Pennsylvania General Assembly as of December 31, 1980. On August 5, 1982, OSM proposed an amendment to 30 CFR 820 and requested public comment on the revisions to 30 CFR 820.11 and on all changes to the anthracite environmental protection provisions adopted by the Commonwealth since August 3, 1977, for incorporation by reference in 30 CFR 820.11 (47 FR 33988–33990). By that notice, OSM indicated that a public hearing on the proposed rule would be held if requested. Since no person requested a hearing, none was held. The public comment period ended on September 7, 1982.

The amendment to 30 CFR 820.11 being promulgated today encompasses the following Pennsylvania laws and regulations:

(1) The Pennsylvania Administrative Code of 1929, April 9, 1929, Pub. L. 177, as amended through June 30, 1982, 71 P. S. Sections 1920–A and 1928–A (Purdons 1928 Supp.)

(2) The Pennsylvania Coal Refuse Disposal Control Act, September 24, 1968, Pub. L. 1040, No. 318, as amended through June 30, 1982, 52 P. S. Section 30.51 *et seq.* (Purdons 1966, 1978, 1982 Supp).

(3) The Pennsylvania Surface Mining Conservation and Reclamation Act, May 31, 1945, Pub. L. 1198, as amended through June 30, 1982, 52 P. S. Section 1396.1 *et seq.* (Purdons 1966, 1978, 1982 Supp.)

(4) The Pennsylvania Anthractie Coal Mine Act of 1965, Pub. L. 346, as amended through June 30, 1982, 52 P. S. Section 70.101 *et seq.* (Purdons 1966, 1978, 1982 Supp.)

(5) The Pennsylvania Clean Streams Law, Pub. L. 1987, as amended through June 30, 1982, 35 P. S. Section 619.1 *et seq.* (Purdons 1977, 1978, 1982 Supp.)

(6) The Pennsylvania Gas Operations, Well-Drilling, Petroleum and Coal Mining Act, Pub. L. 756, November 30, 1955, as amended through June 30, 1982, 52 P. S. Section 2101 *et seq.* (Purdons 1966, 1982 Supp.)

(7) Provisions regulating the discharge of coal, culm or refuse into streams under Pub. L. 640, June 27, 1913, as amended through June 30, 1982, 52 P. S. Section 631 *et seq.* (Purdons 1966, 1982 Supp.)

(8) Regulation of coal stripping under Pub. L. 133, June 18, 1941, as amended through June 30, 1982, 52 P. S. Section 1471 *et seq.* (Purdons 1966, 1982 Supp.)

(9) Regulation of subsidence under Pub. L. 1198, May 22, 1921, as amended through June 30, 1982, 52 P. S. Section 661 *et seq.* (Purdons 1966, 1982 Supp.)

(10) Regulation of subsidence under Pub. L. 1538, September 20, 1961, as amended through June 30, 1982, 52 P. S. Section 661 *et seq.* (Purdons 1966, 1982 Supp.)

(11) The establishment of mine safety zones under Pub. L. 1994, December 22, 1959, as amended through June 30, 1982, 52 P. S. Section 3101 *et seq.* (Purdons 1966, 1982 Supp.)

(12) Pennsylvania Air Pollution Control Act of January 8, 1960, Pub. L. 2119, as amended through June 30, 1982, 35 P. S. Section 4001 *et seq.* (Purdons 1966, 1982 Supp.)

(13) Pennsylvania Solid Waste Management Act of 1980, Act No. 97, as amended through June 30, 1982, 35 P. S. Section 6018.101 *et seq.* (Purdons 1982 Supp.)

(14) Use of Explosives Act, July 10, 1957, Pub. L. 685, No. 362, as amended through June 30, 1982, 73 P. S. Section 164 *et seq.* (Purdons 1976, 1982 Supp.)

(15) Explosives Act, July 1, 1936, Pub. L. 268, No. 537, as amended through June 30, 1982, 73 P. S. Section 151 *et seq.* (Purdons 1971, 1982 Supp.)

(16) The following Chapters of Title 25 of the Pennsylvania Code: Chapters 75, 77, 86, 88, 91, 92, 93, 94, 95, 97, 100, 101, 102, 105, 121, 123 124, 127, 129, 131, 133, 135, 137, 139, 141, 143, 209, 210, 211, 241, 243, and 401.

Previous 30 CFR 820.11 actually listed the Pennsylvania statutory provisions that are applicable to anthracite mining in the State. The amended rule being promulgated today simplifies the language of existing 30 CFR 820.11 by incorporating by reference all the approved or amended Commonwealth of Pennsylvania statutes and rules contained in its approved State program, but without listing them. No substantive change is intended by the change in format. The amended rule provides a direct means to incorporate automatically in 30 CFR 820.11 any future changes to Pennsylvania's anthracite laws and rules that are approved by OSM as State program amendments under 30 CFR 732.17.

Proposed Effective Date

Under Section 529 of SMCRA, to the extent that the Pennsylvania State program incorporates statutory provisions revised since August 3, 1977, the Federal rules should incorporate those provisions. Thus, to provide the consistency between the Federal rules and the Pennsylvania State program, OSM put operators on notice by that **Federal Register** notice announcing the proposed rule (47 FR 33989) that the final rule adopting the changes being promulgated today will be made effective retroactive to the effective date of the Pennsylvania State program, July 31, 1982.

IV. Disposition of Public Comments

One commenter stated that the proposed action should be postponed pending the outcome of litigation in which the litigants seek to enjoin Pennsylvania's revisions to the anthracite program which were approved by the Secretary of the Interior. Inasmuch as the litigation is a State matter before the Commonwealth Court of Pennsylvania, the Secretary finds no basis for postponing the final rule. If the Commonwealth is enjoined from implementing or enforcing its regulatory program governing anthracite, the Secretary will take the appropriate action under SMCRA and 30 CFR Chapter VII. Upon conclusion of the litigation, any State laws that remain in place, or that are subsequently enacted, that cover anthracite mining, and which are approved by OSM as part of Pennsylvania's State program, will be consistent with § 820.11.

V. Procedural Matters

Paperwork Reduction Act

There are no information collection requirements in 30 CFR 820.11 requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

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 actions directly related to approval or conditional approval of State regulatory programs, actions, or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Because OSM is by this rulemaking incorporating all of Pennsylvania's revisions to its environmental protection revisions concerning anthracite mining without exercising discretion under Section 529 of SMCRA, this is not a major Federal action that may significantly affect the human environment under 43 U.S.C. 4231 et seq.

List of Subjects in 30 CFR 820

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

Accordingly, 30 CFR Part 820 is hereby amended, as set forth herein.

Dated: October 1, 1982.

William P. Pendley,

Assistant Secretary for Energy and Minerals.

Part 820 Special Permanent Program Performance Standards—Anthracite Mines in Pennsylvania.

PART 820 [AMENDED]

1. The Authority Citation for Part 820 is

Authority. Secs. 102, 201, 501, 503, 504, 529, Pub. L. 95–87, 91 Stat. 448, 449, 467, 470, 471, 514 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1279).

2. Section 820.11 is revised to read as follows:

§ 820.11 Performance standards: Anthracite mines in Pennsylvania.

Anthracite mines in Pennsylvania, as specified in Section 529 of the Act, shall comply with its approved State program, including Commonwealth of Pennsylvania statutes and regulations, and revisions thereto that are approved by OSM pursuant to Part 732 of this chapter.

[FR Doc. 82-27925 Filed 10-8-82; 8:45 am]

BILLING CODE 4310-05-M

Federal Register

Tuesday
October 12, 1982

Part IV

Environmental Protection Agency

State and Local Assistance

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[OA-FRL 2205-4]

State and Local Assistance

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA has nine programs providing financial assistance to State and local agencies for continuing environmental programs. Each program has had separate administrative requirements. This rule establishes uniform administrative requirements. and procedures for all nine programs. The rule also contains the assistance provisions uniquely applicable to each program.

DATE: This rule is effective on October 12, 1982 except for § 35.140, which contains information collection requirements which must be approved by OMB before they are effective. A notice of that approval will be published in the **Federal Register.** Applicants may elect to comply with the provisions of § 35.140 now, or they may comply with the application provisions contained in the old §§ 35.526, 35.527, 35.528, 35.611, 35.626, 35.670, 35.718, 35.722, 35.755, 35.775, 35.778, 35.1010, 35.1030(a) and 35.1513.

ADDRESS: Comments received on the proposed regulation may be inspected at the Central Docket Section, West Tower Lobby, Gallery Room 1, 401 M Street, SW., Washington, D.C., between 8:15 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Cynthia Puskar, Grants Administration Division (PM-216), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-5295.

SUPPLEMENTARY INFORMATION: This regulation, 40 CFR Part 35, Subpart A—Financial Assistance for Continuing Environmental Programs, amends the financial assistance requirements now contained in 40 CFR Part 35, Subparts B, F, and G. It eliminates unnecessary requirements and develops consistency for as many of the remaining requirements as possible. Subpart A establishes administrative requirements and procedures for financial assistance awarded by EPA to State, interstate, and local agencies for continuing environmental programs. The financial assistance programs for which EPA anticipates funding in FY 1983 and the substantive program regulations associated with them are identified below. To understand the substantive and administrative requirements governing a particular program, both Subpart A and the appropriate programmatic regulation should be read together.

- Air pollution control (section 105 of the Clean Air Act; *Catalog of Federal Domestic Assistance* (CFDA) No. 66.001); 40 CFR Parts 50–52, 58, 60–62, and 81.
- Water pollution control (section 106 of the Clean Water Act; CFDA No. 66.419); 40 CFR Part 35, Subpart G.
- State administration (section 205(g) of the Clean Water Act; CFDA No. 66.438); 40 CFR Part 35, Subparts F and I.
- Water quality management planning (section 205(j) of the Clean Water Act); 40 CFR Part 35, Subpart G.
- Public water system supervision (section 1443(a) of the Safe Drinking Water Act; CFDA No. 66.432); 40 CFR Parts 141–143.
- Underground water source protection (section 1443(b) of the Safe Drinking Water Act; CFDA No. 66.433); 40 CFR Parts 122–124 and 146.
- Hazardous waste management (section 3011 of the Solid Waste Disposal Act, as amended; CFDA No. 66.451); 40 CFR Parts 122, Subparts A and B; 123, Subparts A, B, and F; 124, Subparts A and B; and 260–266.
- Pesticide enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act; CFDA No. 66.700); 40 CFR Parts 162, 165–167, 169–170, and 172–173 and 19 CFR Part 12.
- Pesticide applicator certification and training (section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act); 40 CFR Parts 162 and 170–171.

Subpart A amends the financial assistance requirements now contained in 40 CFR Part 35, Subparts B, F, and G. EPA is also in the process of amending the programmatic requirements contained in Subparts F and G. EPA recently proposed the Construction Grants Program Delegation to States Regulation as Part 35, Subpart J, and is about to propose a Water Quality Planning and Management Regulation as Part 130. The following table shows the relationship between Subparts B, F, and G (as they appear in the current *Code of Federal Regulations*) and Subpart A and associated program regulations under development. The "new" column indicates the section of 40 CFR Part 35 or other parts of 40 CFR to which EPA is moving or plans to move existing requirements. This table is for informational purposes only.

Old section	Old title	New
35.001	Purpose of regulation	35.001.
35.002	Applicability and scope	35.001.
	Subpart B—Program Grants	
35.400	Purpose	35.100.
35.403	Authority	Authority.
35.404	Annual guidance	35.125.
35.405	Criteria for evaluation	35.141.
35.410	Evaluation of agency performance.	35.150.
35.415	Financial status report	Part 30.
35.420	Payment	35.141; Part 30.
35.425	Federal and grantee program support.	Part 30.
	Air Pollution Control Program Grants	
35.501	Definitions	35.105.
35.505	Allocation of funds	35.115; 35.120; 35.155.
35.507	Federal assistance	35.135; 35.205.
35.510	Grant allotment and amount	35.115; 35.141; 35.143.
35.515	Control program eligibility	35.205; 35.210; 35.215.
35.520	Criteria for award	35.205; 35.210; 35.215.
35.526	Agency program preparation	35.125; 35.130.
35.527	Major program elements and outputs.	35.125; 35.130.
35.528	Agency program submission	35.140.
35.529	Program approval	35.140
35.530	Grant conditions	35.210.
35.535	Assignment of personnel	Deleted.
35.538	Agency evaluation and reports.	35.150.
	Grants for State Public Water System Supervision Programs	
35.600	Scope and purpose	35.100.
35.603	Definitions	35.105
35.605	Determination of allotments	35.115; 35.120; 35.155.
35.607	Rate of Federal assistance	35.405.
35.611	Application for grant	35.130; 35.140.
35.613	Limitation on grant award	35.410.
35.620	Allowable costs	Part 30.
35.622	Budget period	35.135.
35.624	Reduction of grant amount	35.150.
35.626	State program plan	35.130; 35.140; 35.141; 35.143; 35.150.
35.628	Program limitations	Deleted.
35.630	Assignment of personnel	Deleted.
	State Underground Water Source Protection Program Grants	
35.650	Scope and purpose	35.100.
35.653	Definitions	35.105
35.655	Determination of allotments	35.115
35.656	Determination of reallotments.	35.155.
35.657	Rate of Federal assistance	35.455.
35.659	Eligibility for grant award	Deleted.
35.660	Limitation on grant award	35.460.
35.661	A-95 Clearinghouse review	Part 30.
35.662	Allowable costs	Part 30.
35.664	Budget period	35.135.
35.666	Reduction of grant amount	35.150.
35.670	Annual State program grant plan.	35.130; 35.140; 35.141; 35.143.
35.675	Assignment of personnel	Deleted.
35.680	Program evaluation and reports.	35.150.
	Solid and Hazardous Waste Management Program Support Grants	
35.700	Purpose	35.100.
35.701	Definitions	35.105.
35.702	Summary of program	35.110.
35.704	Eligibility for funding	35.141.
35.706	Allotments	35.115.
35.708	Regional allowances	35.120.
35.710	Grant amount	35.141; 35.143; 35.155.
35.712	Reduction of grant amount	35.150
35.714	Federal share	35.505.
35.716	Budget period	35.135.
35.718	State program development	35.130; 35.140.
35.720	Involvement of agencies	Deleted.

Old section	Old title	New
35.722	Program elements	35.130.
35.724	Clearinghouse review	Part 30.
35.726	Public participation	Part 25.
35.728	Program review and approval.	35.141.
35.730	Required outputs	Deleted.
35.732	Implementation and substate grants.	Deleted.
35.734	Rural communities assistance.	Deleted.
35.736	Special communities	Deleted.
35.738	Limitations on award	Deleted.
35.740	Adherence to budget estimates.	Part 30.
35.742	Program changes	Part 30.
35.744	Program evaluation and reporting.	35.150.
	Assistance for Pesticide Enforcement and Applicator Certification Programs	
35.750	Scope and purpose	35.100.
35.751	Definitions	35.105.
35.752	Eligibility	35.550; 35.600.
35.753	A-95 Clearinghouse review	Part 30.
35.755	Application submission	35.140.
35.758	Application evaluation	35.141.
35.761	Allotments and distribution of funds.	35.120.
35.762	Enforcement funds	35.115.
35.763	Applicator certification funds	35.115.
35.764	Amount and reallocation	35.141; 35.143; 35.155.
35.767	Rate of Federal assistance	35.555; 35.605.
35.769	Reduction of amount	35.150.
35.771	Budget period	35.135.
35.775	Program plan	35.130.
35.778	Program elements	35.130.
35.782	Program evaluation	35.150.
35.786	Reporting	35.150.
	Subpart F—State Management Assistance Grants	
35.1000	Purpose and scope	35.100; 35.300; 35.3000.
35.1005	Policy	35.3005.
35.1010	Application for grant	35.140; Part 30.
35.1015	Eligibility for funding	35.300.
35.1016	Limitations on award	35.305; 35.310; 35.2020.
35.1020	Grant amount and award	35.115.
35.1025	Payment	Part 30.
35.1030	Delegation agreement	35.130; 35.310; 35.3010; 35.3015; 35.3020.
35.1033	Public participation	35.3035; Part 25.
35.1035	Adherence to budget estimates.	Part 30.
35.1040	Program evaluation and reporting.	35.150; 35.3025.
35.1045	Reduction of grant amount	35.150.
35.1050	Disputes	35.3030; Part 30.
	Subpart G—Grants for Water Quality Planning, Management and Implementation	
35.1500	Purpose and scope	35.100.
35.1501	Applicability	35.100.
35.1502	Definitions	35.105; Part 130.
35.1503	Program summary	35.130; Part 130.
35.1505	Water quality goals	Part 130.
35.1507	Public participation	Part 25.
35.1509	Continuing planning process	Part 130.
35.1511	Assessments and State strategy.	Part 130.
35.1513	WQM work program	35.130; 35.135; 35.141; 35.143; 35.150.
35.1515	State/EPA Agreement	Deleted.
35.1517	Conflict resolution	Deleted.
35.1519	Selection of § 208 agencies	Part 130.
35.1521	Water quality management planning.	Part 130.
35.1523	Certification of WQM plans	Part 130.
35.1525	Reviewing after approval	Part 130.
35.1527	Evaluation of performance	Part 130
35.1529	Change in agency designation.	Part 130.
35.1531	Intergovernmental coordination.	Part 130.
35.1533	Implementation	Part 130.
35.1535	Allotments and reallotments	35.115; 35.155.
35.1537	Grant limitations and administration.	35.130; 35.135; 35.140; 35.141; 35.143; 35.150; 35.155; 35.250; 35.255; 35.260; Part 30.
35.1540	Interstate agencies	Deleted.
35.1542	Termination of reporting	Deleted.
35.1550	Water quality standards	Part 131.

Response to Comments

During the public comment period on the proposed rule, which was published in the **Federal Register** (46 FR 25912) on June 15, 1982, we received sixteen letters and five telephone calls. Several of the letters totally supported the proposed rule. The other commenters supported the rule in general but recommended changes to particular sections. We made changes to the regulation in response to the comments we received. No major changes were required. We address all the changes suggested by commenters in the following section on changes to the previous regulations.

Description of Changes

EPA developed this regulation in conjunction with associated program regulations to clarify and standardize the procedures for awarding and managing financial assistance to continuing State and local environmental programs. The regulation establishes uniform, simplified requirements and procedures for nine assistance programs. It also identifies requirements unique to each program.

In the process of developing one regulation for all nine programs, EPA made several changes which will make it easier for States and local governments to do business with the Agency. EPA has attempted to make this regulation clear and concise, so that applicants will be able to understand and use it easily. The regulation is also designed to be flexible, so that the Regional Administrator and the applicant will be able to develop processes more appropriate to their needs. Finally, the regulation reduces the paperwork required of applicants. The specific changes are described below.

Continuing Environmental Programs

The regulation makes clear in § 35.100 that the financial assistance awarded under the regulation supports environmental programs which are "continuing," that is, which will not be completed during a project period which is definable. Such programs can receive continuation awards under an application process which is less rigorous than the process for new awards. Most importantly, as explained in § 35.141, a recipient of a continuation award may be reimbursed for allowable costs incurred between the beginning of the budget period and the date of award, if those costs are covered by the approved application. Continuing programs may also receive Federal funding under a continuing budget resolution enacted by Congress.

Definitions

The regulation contains in § 35.105 definitions of various terms relating to financial assistance. Several of the definitions are new, while others are taken from the existing regulations. Since not all of the existing regulations use the same terms in the same ways, the reader should become familiar with the new definitions to avoid misinterpretation.

One commenter suggested that we define "budget period" and "continuing program" and revise the definition for "continuation award" accordingly. Part 35 supplements the general assistance requirements in Part 30. Since Part 30 defines all the generally applicable financial assistance terms, including "budget period," we do not believe it is necessary to repeat those definitions in this regulation. We agree that the other changes are appropriate and revised § 35.105 accordingly.

Another commenter suggested that we should revise the definition for "recurrent expenditures" to exclude certain equipment purchases. We agree and revised § 35.105 accordingly.

Summary of Annual Process

The regulation contains in § 35.110 a brief summary of the financial assistance process.

One commenter requested clarification of the summary of the annual process in § 35.110(a). He questioned how planning targets are derived and whether EPA will provide planning targets and program guidance for all programs, including State administration and water quality management planning. EPA will provide planning targets and program guidance for all programs. We revised § 35.110(a) and § 35.120 to clarify the process and our intent.

The same commenter suggested that § 35.110(b) should be revised to allow the Regional Administrator to approve the work program as soon as possible rather than waiting for funds to become available. We agree, and we revised § 35.110 accordingly.

Allotments and Reserves

The regulation lists in § 35.115 all the factors which the various statutes and regulations require EPA to consider in allotting funds among the States. Congress determines the construction grant allotment, from which the State proposes reserves for State administration and water quality management planning. For the other programs, the regulation will form the basis for determining State allotments.

Section 35.115 does not change EPA's allotment process. As under existing regulations, EPA regional and Headquarters staff, in consultation with State, interstate, and local agencies and affected constituent groups, consider the relevant factors, determine appropriate sources of data and relative weights of the factors, and formulate an allotment for each program in each State. Except in the hazardous waste management program, the regulation does not create any changes in the actual allotment distribution (the percentage of each program's budget request or appropriation allotted to each State). For hazardous waste management, the regulation no longer contains a requirement for a minimum allotment to each State of one-half of one percent of the sums available. EPA has eliminated that provision because it is not required by the Solid Waste Disposal Act, as amended.

Several commenters were concerned about the allotment criteria in § 35.115, particularly those for the hazardous waste management program. They were concerned that the allotment language was very general and that differing interpretations from year to year could disrupt the continuity of program planning.

We agree that "roller coaster" funding is undesirable, especially for newer programs like hazardous waste management, and we do not want to create the potential for such erratic funding. However, the formulas in the previous regulation did not guarantee constant State funding levels or program continuity, even assuming stable appropriation levels. For hazardous waste management, for example, the previous regulation allocated funds in part on the relative share of the volume of hazardous wastes generated and number of hazardous waste generators in each State. Those statistics on hazardous wastes change from year to year. Such variations could alter relative State shares of available funding.

We are afraid that rigid formulas, subject to such variations, might lead to undesirable funding shifts because the statistics the Agency would be committed to using might not continue to provide an appropriate distribution. Therefore, we removed the rigid formulas for the previous regulation to give us the flexibility both to put the money where the problems are and to protect program continuity.

While we replaced the rigid formulas with statutory criteria, we have not actually changed the formulas. The existing formulas are based on the statutory criteria. EPA regional and Headquarters staff will continue to consult with State agencies and affected professional organizations, such as the Association of State and Territorial Solid Waste Management Officials, before revising the existing formulas.

Two commenters did not support our eliminating the minimum allotment of one-half of one percent of the sums available for hazardous waste management. They were concerned that without it they would not receive enough money to manage an effective program. We feel, however, that EPA allotment procedures are sufficient to allow us to distribute these funds to meet the needs of all States and that minimum allotment requirements restrict our ability to target funds.

Another commenter questioned EPA's interpretation of Clean Water Act language relative to 205(j) reserves. He did not think the Act required a minimum reserve. EPA disagrees. Based upon the statutory language and legislative history, we feel Congress required the Administrator to reserve a minimum of $100,000 from each State's construction grant allotment for water quality management planning activities. However, because $100,000 is such a large percent of the allotments to Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific, and the Northern Mariana Islands, the minimum is waived for those areas.

Planning Targets

After State allotments are determined, the second step in making funding decisions is the development of a planning target for each applicant to use in preparing a work program. The regulation reiterates in § 35.105 the explanation from the previous regulations that "an allotment is not an entitlement" and explains in § 35.120 that an applicant's planning target is also based on the Regional Administrator's evaluation of each applicant's ability to use allotted funds effectively. Of course, no Regional Administrator will disrupt any continuing environmental program by arbitrarily issuing planning targets which are significantly less than the allotments.

Program Guidance

The regulation contains in § 35.125 a discussion of program guidance which was previously contained in each of the separate grant regulations. The previous regulations indicated that guidance would be published "in February" or "as soon as practicable after the President submits his budget to Congress." This regulation does not specify the timing for guidance, because the Agency is still developing a revised guidance process.

EPA is still committed to providing guidance in time for applicants to use in structuring work programs covering agreed upon budget periods. The Agency is currently evaluating the process and timing for producing and disseminating operating guidance for use by applicants.

We requested comments on the timing of guidance to help us in our evaluation. We received only two comments on this issue. One pointed out the importance of timeliness and the other recommended that the applicant be allowed to base its application on the most recent guidance it had received prior to the beginning of its budget period. Both commenters pointed out that timeliness is particularly important since the regulation allows applicants to use a budget period other than the Federal fiscal year. We agree and are recommending that national program managers commit to timely guidance. EPA's Office of Water has already announced its intention to provide guidance on national priorities, performance areas, and resource assumptions each February as part of the Office of Water Operating Guidance and Accountability System.

One commenter was concerned that the regulation placed total emphasis on EPA priorities and judgments and eliminated the State's ability to select from among the national objectives and priorities. He suggested that provision should be made for consultation between the Regional Administrator and the applicant to discuss Headquarters guidance before regional guidance is provided to the applicant. The opportunity to exchange views informally is available during the development of planning targets and work programs. If the State desires a more formal process, such an opportunity is provided during the development of State/EPA Agreements (SEAs).

Work Program Development

The regulation defines "work program" in § 35.105 as "the document which identifies how and when the

applicant will use program funds to produce specific outputs." The requirements for an acceptable work program are contained in §35.130, which also indicates that the work program is part of a complete assistance application.

Although the requirement for a work program is essentially unchanged from the previous regulations, this regulation includes three revisions which simplify the paperwork required of applicants and allow each applicant to submit the work program developed for its own use to meet EPA's application requirements.

First, the regulation eliminates the requirement from the previous regulations that the work program be developed in a specified format. Instead, EPA will include in annual guidance the program elements which the Agency uses to manage its programs and to justify its budget to OMB and Congress. An applicant is not required to present its work program in a specified format but will be allowed to use its own format, if the Regional Administrator agrees that it contains the information EPA needs.

Second, the regulation simplifies the narrative justification section previously required in Part IV of the assistance application. An applicant is required to submit only its proposed work program, a statement certifying its consistency with EPA-approved documents such as State strategies, and an evaluation of progress under its current work program to meet the requirements of Part IV. Any other specific information previously required as part of the application may be negotiated as output commitments under the assistance agreement.

Third, the regulation clearly limits the definition of "maintenance of effort" to the applicant's expenditures in an approved program, such as activities funded under section 105 of the Clean Air Act. This allows the applicant to submit its entire work program in a particular medium without fear of being held to a more broadly defined maintenance of effort requirement. For example, an agency may submit its entire air pollution control work program, and in future years EPA will require the agency to maintain only the level of expenditure associated with its approved section 105 air program. Under the previous regulations, the agency was required to maintain a level of expenditure associated with its entire air program. This change does not allow applicants to recompute existing maintenance of effort levels but, rather, limits what will be considered to increase that level in future years.

We received several comments in support of § 35.130. We also received comments from one commenter who had three concerns.

First, he felt that the requirement to "specify the work years and the amount and source of funding allocated to each program element" was "contrary to the proported intent of this revision." Our stated intent was "to eliminate unnecessary requirements and to develop consistency for as many of the remaining requirements as possible." While we tried to reduce the requirements of the previous regulations to statutory minimums, we retained requirements that are needed for sound program management. This is one of those requirements. EPA uses this information to evaluate the application and the reasonableness of proposed costs. It also uses it, as explained in the preamble, to justify its budget to OMB and Congress. We expect the applicant/recipient to provide us its best estimate of these amounts in its application and progress reports. We revised § 35.130 to clarify our intent. It should also be noted that EPA does not intend for the recipient to set up an accounting system to track funds by program element.

Second, the commenter did not feel that we should be concerned with the eligibility and appropriateness of planned expenditures in reviewing a work program. He suggested that we should leave those concerns to financial audits. We respectfully disagree with this approach and do not, therefore, feel that any changes are necessary. We feel that it is better to provide applicants/recipients with direction during development of the work program and before expenditures are made, rather than to wait to evaluate their program through audits. The latter approach might require EPA to recover funds spent by recipients on activities they believed, erroneously, to be eligible for funding. We think the recipient should be provided the opportunity to adjust its program along the way to minimize potential losses.

Finally, the commenter asked for clarification of the requirement for a 205(g) work program to "include any outputs required under an authorization of delegation agreement." This language is intended to reemphasize the requirement in § 35.140 that the work program be consistent with the delegation agreement.

Budget Period

The regulation in §35.135 allows the applicant to consult with the Regional Administrator to establish the budget period for the assistance award, instead of requiring the applicant to use the Federal fiscal year. The budget period in the time period specified in the assistance agreement during which EPA authorizes the recipient to expend, obligate, or commit funds to complete the outputs. Based on the comments EPA received on earlier drafts of this regulation, the Agency anticipates that many States will want to convert the budget periods for the assistance they receive to their own fiscal year, which for 48 States and Territories is July 1 through June 30.

To make the transition from the Federal to the recipient's fiscal year, the Regional Administrator could award financial assistance for a work program starting October 1 and ending the day before the beginning of the recipient's fiscal year. The Regional Administrator would then reserve the balance of a recipient's planning target for future award to the recipient. For subsequent awards, the recipient would develop a work program based on its own fiscal year. The Regional Administrator would make a partial award from the balance of the previous year's planning target. Once Congress appropriates funds for the next Federal fiscal year, the Regional Administrator would increase the award as necessary to complete the approved work program. The Regional Administrator would again reserve the balance of the recipient's planning target for future award to the recipient.

We received several comments in support of the flexibility provided in this section. Two commenters noted, however, that the proposed language suggested that the budget period was the prerogative of the Regional Administrator. They recommended that the applicant be allowed to choose a budget period subject to the approval of the Regional Administrator. We agree and revised §35.135 accordingly.

The Application Process

The regulation substitutes one uniform application process and set of requirements for the separate, differing processes and requirements of the previous regulations. This regulation includes three revisions which simplify the paperwork required of applicants.

First, the regulation eliminates the requirement for a preliminary application and allows each applicant and Regional Administrator to develop their own process for reaching agreement on a work program and assistance application. Some applicants will probably continue to submit formal preapplications, while others may prefer face-to-face staff level negotiations early in the process. In either case, the applicant is responsible for early resolution of all issues which could risk

delaying approval of the assistance application and award of assistance.

Second, the regulation reflects the Agency's newly adopted State/EPA Agreement (SEA) policy by removing the requirement that a State sign an SEA before receiving EPA financial assistance. However, EPA continues to believe that the SEA is a valuable tool to improve agency relationships with States and use resources more efficiently. From now on, the Regional Administrators will be responsible for assuring that all States have an opportunity to participate in the SEA process. Any State which wishes to maintain the process may do so.

Third, the regulation eliminates the requirement for an applicant to *document* that the proposed work program is consistent with all applicable EPA-approved State strategies, program plans, and delegation or authorization agreements. Instead, applicants will only have to list such documents and *certify* that the proposed work program is consistent with them. As part of the application review process, the Regional Administrator may require additional explanation or clarification on the consistency of these documents.

We received several comments on this section and made a number of changes. One change was structural. For clarity, we separated the proposed § 35.140, "Application for assistance," into two sections, § 35.140, "Application for assistance," and § 35.141, "EPA action on application." Other, more substantive changes are discussed below.

During internal Agency review, several commenters were concerned that we had eliminated the Regional Administrator's authority to award an amount less than that requested. We had intended for the proposed § 35.140(b) to provide him that authority. To clarify Agency policy, we added a new section, § 35.143, "Grant amount." The section makes clearer that the Regional Administrator still has the authority to reduce the proposed amount of funding if the proposed output commitment is not consistent with the level of funding requested or with national priorities. This provision makes Agency guidance establishing program priorities binding on grant recipients.

Another EPA commenter was concerned that 60 days was not enough time for regional review and negotiation of a work program. He suggested that the application be required 90 days before the beginning of the budget period. We disagree. We feel that face-to-face negotiations, discussions, or submittals before formal application should provide the applicant and the region the opportunity to resolve most differences before the submittal of the application. 60 days should be plenty of time to review the application once it is submitted.

Another commenter had several concerns. First, he thought it was inappropriate to require the applicant to submit a discussion of his performance to date as part of an application. He felt that the evaluation of past performance is adequately covered in § 35.150. We do not disagree. However, OMB Circular A–102 requires submittal of such information with the grant application. To make it easier for applicants to fill this requirement, they may submit their most recent progress report where one exists.

He also was concerned that the 60-day time frame for application submittal would be difficult to implement because it would require the A–95 review process to begin the end of June. It is not clear to us how this is a problem since the previous regulation required submittal 90-days prior to the budget period. That meant the A–95 review process had to begin by the end of May. The change gives the applicant an additional 30 days to file for A–95 review. Any problem which might exist, however, should be solved by the revised intergovernmental review process being developed in response to Executive Order 12372. That Order instructed the Director of OMB to revoke Circular A–95 and Federal agencies to issue, by April 1983, new requirements which rely on the States' processes to review Federal assistance applications.

The same commenter also suggested that the Regional Administrator should be required to complete his review within 60 days. We agree and revised the proposed § 35.140(b) accordingly. This section appears in the final rule as § 35.141.

Finally, he questioned the benefit of allowing an applicant to certify that its work program is consistent with various documents if the Regional Administrator could require clarification. We think this section significantly reduces the application burden of the previous regulation, even considering the chance the Regional Administrator may need to request clarification. We expect such requests will be the exception rather than the rule. We feel it is important, however, to reserve that right for the Regional Administrator in case questions develop during the application review process.

Another commenter was concerned that § 35.140 commits applicants to outputs without consideration that funding in the amount of the "planning target" may not become available. If the Congressional appropriation is insufficient to provide applicants their planning target, EPA will negotiate revisions to work programs to reflect any reductions. The applicant is not committed to the outputs in the work program until he signs and accepts the award. Similarly, EPA approval of the work program is not a commitment of grant funds.

A final commenter was concerned because we eliminated references to Clean Air Act State Implementation Plans (SIPs). He wanted to make sure that financial assistance would be provided for SIP-related activities. We agree that SIPs are the driving force behind air pollution control programs and that SIP-related activities are eligible for funding. We revised the proposed § 35.140(b)(1) to indicate that outputs are approvable if they "are consistent with EPA guidance or otherwise demonstrated to be necessary and appropriate." This section appears in the final rule as § 35.141(a).

Consolidated Assistance

The regulation indicates in § 35.145 that any applicant eligible to receive and administer funds from more than one assistance program may submit an application for consolidated assistance. An applicant for consolidated assistance prepares a single budget and work program covering all assistance programs included in the application. Although the recipient of consolidated assistance must meet all the statutory requirements governing the use of funds in each assistance program, EPA believes that the consolidated process can save applicants considerable time and money. Consolidation was also allowed under previous regulations. Any applicant interested in consolidated assistance may obtain additional information from the Regional Administrator.

A logical example of the program benefits of consolidation is found in the water quality management (WQM) program. The Clean Water Act provides funding for WQM activities in sections 106, 205(g), and 205(j). By consolidating these work programs and assistance applications in the manner suggested by this regulation, States will be able to coordinate available Federal funding to accomplish their WQM priorities efficiently. A State which wants to address the water quality problems of a priority water body by using 106 funds for monitoring, 205(j) funds for determining total maximum daily loads, and 205(g) funds for permitting may use a consolidated assistance application and related work program to assure that

the activities being proposed in the priority water body are completely coordinated.

One commenter suggested that we remove the last two sentences in § 35.145 to encourage grant consolidation. We agree that such a change would make consolidated grants more attractive. However, under existing statutory authorities, grant funds must be awarded and tracked by separate program appropriation. Also, the individual EPA programs need the program element information to manage the separate programs and to justify the budget for each to OMB and Congress. We cannot, therefore, remove these requirements.

Another commenter, however, noted that Insular Areas interested in consolidating financial assistance under Title V of Public Law § 95–134 may be exempted from various requirements of this subpart. We agree and revised § 35.145.

Management and Evaluation

The regulation retains in simplified form the management responsibilities contained in the previous regulations. As before, each recipient must expend resources according to the approved application, which may be amended at any time by mutual agreement of the recipient and the Regional Administrator. The Regional Administrator will develop, in consultation with the applicant, a process for evaluating the recipient's performance. The Regional Administrator will limit evaluation to that which is necessary for effective management, with the intervals for evaluation included in the assistance agreement. The evaluation process must be consistent with existing program-specific agreements (e.g., a construction grant delegation agreement). As in previous regulations, the Regional Administrator may terminate or annul any financial assistance if the recipient's performance under the approved work program is not satisfactory and the situation cannot be resolved through negotiation.

One commenter noted that § 35.140(a) "required" the applicant to submit as part of an application "a plan for assessing and reporting periodically the accomplishment of status of outputs." He suggested that this was an unnecessary burden to the recipient, since nothing required the Regional Administrator to follow that plan. He suggested that § 35.150 be revised to allow the Regional Administrator to develop, in consultation with the applicant, a process for evaluating its performance. We agree and revised both sections accordingly.

Reallocation

Section 35.155 of this regulation simplifies and clarifies EPA's policy on use of program funds which have not been awarded by EPA. Funds reserved under section 205(g) of the Clean Water Act which have not been awarded will be returned to the State's construction grant allotment to support eligible construction activities, while funds reserved under 205(j) which have not been awarded become subject to reallotment to other States under § 35.2010 of this subchapter. These funds are not available for reallocation under § 35.155. For the other environmental programs, EPA will consider reallocating any funds not awarded to applicants to achieve the objectives for which Congress appropriated them.

Funds remaining in a State's allotment after an initial assistance award and commitment to that State for that year remain in the region for award during the year. The Regional Administrator may use such funds to make supplementary awards to that State for that program or, subject to any limitations contained in appropriations acts, to support a Federal program required by law in that State in the absence of an acceptable State program. The Regional Administrator may also use such funds to supplement awards for that program to other eligible applicants within the region. At the end of the year, funds not awarded by the Regional Administrator will be reallocated by the Administrator to accomplish the objectives of that program.

Funds remaining in a State's allotment because there is no assistance award to that State in that year may be used in two ways. First, subject to any limitations contained in appropriations acts, the Regional Administrator may use such funds to support a Federal program required by law in that State in the absence of an acceptable State program. Otherwise, the Administrator will reallocate any available program funds to accomplish the objectives of that program.

Two commenters did not understand what we meant by "unused" funds. We revised § 35.155 to clarify that we meant funds which have not been awarded by EPA.

Several commenters supported most of the reallocation procedures, but a few questioned the inconsistencies in the procedures for 205(g) and 205(j) reserves. They thought 205(j) reserves should return to the State in the same manner that 205(g) reserves do. The Clean Water Act specifically provides for the 205(g) reserves to return to the State. It does not provide similar procedures for 205(j) reserves.

It should be understood, however, that States which reserve more than the $100,000 minimum for 205(j) may request the Regional Administrator to reduce the reserve to the minimum at any time before those funds become subject to reallotment. Funds so released return to the State's allotment for construction grants. However, any funds remaining in the reserve after their statutory period of availability to the State will be reallotted to other States as construction grant funds. As indicated in § 35.155, details of these administrative procedures are contained in § 35.2010 of this subpart and should be referred to for further clarification.

One commenter noted that the regulation did not deal with funds which recipients are unable to obligate before the close of the previous year's budget period. He suggested that we expand the regulation to provide the Regional Administrator the authority to reallocate such funds. Once EPA awards funds to an agency, EPA cannot reallocate them unless we terminate the award. The Regional Administrator may, however, use the unexpended balance from the previous budget period to offset part of the costs for the current budget period. That process would make funds available from the State's allotment for that year for reallocation as described in § 35.155(a). No changes to the regulation are required.

Three commenters disagreed with the provision of § 35.155(b)(1) which allows the Regional Administrator to use financial assistance funds to support a Federal program required by law in a State in the absence of an acceptable State program. Two of these commenters felt the provision was contrary to Congressional intent. They felt that appropriations for financial assistance programs were to support State programs and not Federal programs in the States. They felt it was EPA's responsibility to determine what programs the Agency would have to operate and to request sufficient funds in its own budget. EPA believes that appropriations for some of the financial assistance programs are intended to implement specific required programs and that, where the State cannot implement acceptable programs, EPA may use the funds to implement Federal programs required in the absence of State programs. EPA has no way of knowing what programs it is going to have to operate at the time it develops its budget request. We, therefore, must

rely on the appropriations for the financial assistance programs to support Federal programs in the State.

Another commenter wanted to know whether a Regional Administrator could use a State's allotment to pay the salaries and expenses of EPA employees to support a Federal program in the State where one is required. Section 35.155(b)(1) indicates that the Regional Administrator may use a State's allotment "subject to any limitations contained in appropriations acts." The current appropriations acts do not allow EPA to use State allotments to pay EPA salaries and expenses. EPA may, however, use a State's allotment to contract for work to support a Federal program where one is required. We feel that the language in § 35.155(b)(1) is appropriate since those limitations may change with annual appropriations.

Program Sections

These sections contain the assistance provisions uniquely applicable to each program.

One commenter was concerned that Subpart A of Part 35 was redundant with sections of Part 30 and the authorizing statutes. He recommended that we eliminate the redundant sections. We did not include many of the redundant sections in earlier drafts and we received numerous comments suggesting that we include them. Commenters on the earlier drafts preferred having all the requirements in one place. After considering all the comments we have received throughout the regulatory development process, we decided not to eliminate these sections.

Another commenter was concerned that we did not expressly refer to Indian tribes as eligible applicants for all of the covered financial assistance programs. While the Agency recognizes the special status of Indian tribes, the language of this regulation follows the language of the various authorizing statutes for the identification of eligible applicants. The statutes generally specify State and local governments and do not separately cite tribal governments as eligible applicants. Tribal governments are, however, eligible under these statutes to the extent they can be legally construed to fall within the definition of State or local government. The commenter suggested that Indian tribes should be treated as States for the purpose of receiving financial assistance. EPA has a task group proposing Agency policy on this and other issues. If it is decided that Indian tribes should be considered States and eligible for funding, nothing in this regulation would alter or limit that eligibility. We, therefore, do not believe that any changes to this regulation are necessary.

Air Pollution Control (Section 105)

During internal Agency review, one commenter correctly noted that we had failed to include the provision of the Clean Air Act which limits the Regional Administrator's authority to provide maximum Federal shares. We revised § 35.205 to make it clear that the Regional Administrator may only provide three-fourths of the approved costs of planning, developing, establishing, or improving an air pollution control program or three-fifths of the approved costs of maintaining that program to State, interstate, or intermunicipal agencies which have substantial responsibility for carrying out an applicable implementation plan.

Another commenter felt that, in order to benefit from the new definition for maintenance of effort in § 35.210, an air pollution control agency should be allowed to redefine its maintenance of effort level. The regulation does not allow applicants to recompute existing maintenance of effort levels. However, we feel that an agency will still be able to benefit from the new definition. Our new definition allows an agency to limit what will be considered to increase its maintenance of effort level in future years. It allows an agency to submit its entire air pollution control work program and (based on its planning target, its previous year's maintenance of effort level, and program guidance) select those activities in its total program which will constitute its 105 program for the year. The next year, the agency must expend an amount of non-Federal funds for its 105 program at least equal to such expenditures during the preceding year. The agency may increase its expenditures for air pollution control activities outside its approved 105 program, but EPA will not require it to maintain such increases.

The same commenter felt that the Regional Administrator should not be required to hold a public hearing to determine that a reduction in an agency's maintenance of effort level is due to a non-selective reduction. Section 35.210 is a statutory requirement. It does not, however, require the Regional Administrator to hold a hearing. It only requires him to provide notice and opportunity for such a hearing. When a request for a hearing is received, the Regional Administrator is expected to hold a hearing.

One commenter supported the limitation in § 35.215 implementing the statutory requirement that the Regional Administrator "consult with" appropriate officials, but he wanted us to strengthen that statutory language to require the "concurrence of" such officials. He thought that such a requirement would insure statewide coordination of air quality programs. We feel that the intergovernmental review process being developed under Executive Order 12372 to replace the old A–95 review process and the consultation required by this regulation are sufficient to insure statewide coordination. We respectfully decline to exceed the statutory requirements to regulate the application process unnecessarily.

Water Pollution Control (Section 106)

One commenter suggested that we include in § 35.255 for the water pollution control program an exception to the maintenance of effort requirement similar to that in § 35.305 for the State administration program. The Clean Water Act does not preclude us from making an exception to the maintenance of effort requirement for the State administration program, since the requirement is an implementation of legislative history rather than statutory language. However, Section 106 of the Act specifically requires an agency to maintain its 1971 level of expenditures to be eligible for a grant. No exceptions are provided. We, therefore, cannot revise the regulation to include such a provision.

Another commenter suggested that we delete the words "permitting" and "planning" from § 35.310(c) in order to require the coordination of construction grant management activities with all the other activities. We included § 35.310(c) to assure the coordination of water quality management and planning activities eligible for assistance from more than one program. We want to avoid duplication of effort. Construction grant management activities are generally supported entirely under section 205(g) of the Clean Water Act. While we agree that coordination of these activities is advisable, we do not think such activities will duplicate water quality management and planning activities. We did not make the suggested change.

State Administration (Section 205(g))

One commenter supported the flexibility provided in § 35.300 to use 205(g) funds for other than construction grant management activities, but he wanted to be reassured that EPA would take a reasonable posture and work with the States to protect the resources needed to manage the construction grant program. Section 35.310 requires the Regional Administrator to award 205(g)

funds for management of a substantial portion of the construction grant program before awarding 205(g) funds for permit and planning activities. It also limits the maximum amount of funds that can be provided for permit and planning activities to the funds remaining in the State reserve after the Regional Administrators allows for funding the management needs of the construction grant program under full delegation. These restrictions reinforce the fact that management of the construction grant program is EPA's first priority for use of 205(g) funds.

Water Quality Management Planning (Section 205(j))

One commenter was concerned that 205(j) funds could not be used to support technical and planning efforts associated with classification of streams and standards setting. It should be noted that the list of activities for which 205(j) funds may be used were taken from the Clean Water Act and, as indicated in § 35.350, the list is not all inclusive. Section 205(j) funds may be used for the activities the commenter identified.

One commenter supported § 35.355 as appropriate in authorizing States to carry out water quality management planning activities in conjunction with local, regional, and interstate agencies.

Four commenters requested clarification of the phrases "shall develop jointly" and "give funding priority to" in relationship to the award of 205(j) funds. In accordance with the policy of Congress (as contained in section 101(b) of the Clean Water Act), EPA recognizes that the States have primary responsibility for reducing and eliminating water pollution. EPA, therefore, interprets section 205(j)(3) of the Clean Water Act to mean that the State will develop the 205(j) work program. The State must, at a minimum, afford existing local, areawide, and interstate planning agencies within the State the opportunity to meet and discuss the substance of the State's proposed 205(j) work program. Where, based on past water quality management program history, such planning agencies have been effective, the State should consider them as the logical agencies to continue to conduct water quality management planning activities.

One commenter was concerned that the language in § 35.355(a) put the Regional Administrator in a position to define State policy. That was not our intention. We have revised § 35.355(a) to reflect the language in the Clean Water Act. EPA will defer to the State's judgment on how best to comply with this requirement unless the State clearly violates the statutory intent. We do not think it is necessary to revise the regulation to further define the statutory language.

Three commenters requested clarification on the annual reports required in § 35.355(b). Section 305(b) of the Clean Water Act requires a biennial report on "the nature, extent, and causes of water quality problems in various areas of the State." Section 205(j) of the recent amendments to the Clean Water Act requires an annual report in order to receive 205(j) funds. EPA is in the process of developing water quality management regulations replacing the programmatic requirements of the existing 40 CFR Part 35, Subpart G, and incorporating requirements of the recent amendments to the Clean Water Act. In developing that rule, EPA has considered the reporting requirements of the two sections. In order to minimize the States' reporting burden, EPA will propose that: (1) In the even years, when the 305(b) report is due, it will serve as the annual report for the purposes of 205(j); and (2) in the odd years, the State may either certify that its 305(b) report is up to date or provide an update. The public will have an opportunity to comment on that requirement when the water quality management regulation is proposed in the **Federal Register.**

Section 35.355 appears in the final rule as § 35.360.

Underground Water Source Protection (Section 1443(b))

During internal Agency review, several commenters suggested that we should postpone implementation of the limitation in § 35.460 which prohibits the Regional Administrator from awarding underground water source protection funds to States which have not assumed primary enforcement responsibility (primacy). Section 1443(b) of the Safe Drinking Water Act prohibits EPA from funding non-primacy States two years after EPA promulgates program regulations. Based on the effective date of the original program regulations, that date was July 24, 1982. However, as the result of litigation, EPA had to revise those regulations substantially. Therefore, the commenters felt that the effective date for the limitation should be postponed. We have determined that the regulatory revisions could delay State program submissions by as much as fourteen months. We have, therefore, changed the effective date for the limitation to September 30, 1983 to allow non-primacy States time to accommodate the changes. Since this change affects applicant eligibility for FY 1983 funding, we will issue supplementary program guidance implementing this change.

Hazardous Waste Management (Section 3011)

One commenter suggested eliminating the requirement in § 35.510 that the applicant must be the lead agency designated in the hazardous waste authorization agreement, where one exists. Due to the multimedia nature of the hazardous waste management program, in many States several different agencies are responsible for the administration and enforcement of the program. EPA believes, therefore, that this requirement is necessary in order to coordinate the responsibilities and work programs of the various agencies and to eliminate the potential for duplication of effort. We have not made any changes to the regulation. It should be noted, however, that where a State agency believes that its responsibilities are so clearly defined as to eliminate the potential for duplication of other State agency efforts, it may apply for deviation from this requirement in accordance with the procedures in 40 CFR Part 30.

Pesticide Applicator Certification and Training (Section 23(a)(2))

One commenter suggested that we should increase the maximum Federal share for the pesticide applicator certification and training program to 85 percent. Section 23 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizes for annual appropriation enough funds to equal 50 percent of the anticipated costs of this program. We interpret that section to limit Federal participation in each recipient's program to 50 percent. We do not have the authority to waive this statutory limit.

Regulation Development

One commenter suggested that we should extend the comment period. He thought each State should be provided time to develop a consensus position. He did not see the need for immediate adoption of the regulation. We did not feel that it was necessary to extend the comment period. We provided State and affected professional organizations opportunity to comment on earlier drafts of this regulation. We reviewed and considered all of the comments we received, even those which came in after the close of the comment period, and adopted appropriate suggestions.

Because this regulation implements statutory and OMB requirements in a less burdensome manner than the old regulations, we were interested in finalizing it as soon as possible. Many

applicants called to encourage us to finalize the regulation so it would be effective for financial assistance awarded after September 30, 1982. Therefore, we did not extend the comment period.

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this regulation is not "major" as it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. There will be no major increase in costs or prices for consumers, individuals, industries, or Federal, State, or local governments. The rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information provisions under § 35.140 in this rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approves them. A notice of that approval will be published in the Federal Register.

List of Subjects in 40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: October 1, 1982.

Anne M. Gorsuch,

Administrator.

For the reasons set forth in the preamble, EPA is amending 40 CFR Part 35 as set forth below.

1. Part 35 is amended by removing § 35.002; all of Subpart B; §§ 35.1000, 35.1010, 35.1015, 35.1016, 35.1020, 35.1025, 35.1033, 35.1035, 35.1040, 35.1045, and 35.1050 of Subpart F; and §§ 35.1501, 35.1513, 35.1515, 35.1517, 35.1535, 35.1537, 35.1540, and 35.1542 of Subpart G.

2. Part 35 is amended by revising § 35.001 and by adding Subpart A to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Sec.
35.001 Applicability.

Subpart A—Financial Assistance for Continuing Environmental Programs

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Hazardous Waste Management (Section 3011)

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35.510 Limitations.

Pesticide Enforcement (Section 23(a)(1))

35.550 Purpose.
35.555 Maximum Federal share.

Pesticide Applicator Certification and Training (Section 23(a)(2))

35.600 Purpose.
35.605 Maximum Federal share.

* * * * *

§ 35.001 Applicability.

This part codifies policies and procedures for financial assistance awarded by the Environmental Protection Agency to State, interstate, and local agencies for pollution abatement and control programs. These provisions supplement the EPA general assistance regulations in 40 CFR Part 30.

Subpart A—Financial Assistance for Continuing Environmental Programs

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); secs. 106, 205(g), 205(j), 208, and 501(a) of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, and 1361(a)); secs. 1443 and 1450 of the Safe Drinking Water Act (42 U.S.C. 300j–2 and 300j–9); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b, 136u, and 136w(a)).

§ 35.100 Purpose.

This subpart establishes in § 35.100 through § 35.199 uniform administrative requirements and procedures for financial assistance to State, interstate, and local agencies for continuing environmental programs. Sections 35.200 through 35.899 establish the assistance requirements unique to each program and cross reference regulations containing substantive program requirements.

§ 35.105 Definitions.

"Allotment." An amount representing a State's share of funds requested in the President's budget or appropriated by Congress for an environmental program, as EPA determines after considering any factors indicated by this regulation. The allotment is not an entitlement but rather the objective basis for determining the range for a State's planning target.

"Continuation award." Any assistance award after the first award to a State, interstate, or local agency for a continuing environmental program.

"Continuing environmental programs." Those pollution control programs which will not be completed within a definable time period.

"Output." An activity or product which the applicant agrees to complete during the budget period.

"Planning target." The amount of Federal financial assistance which the Regional Administrator suggests that an applicant consider in developing its application and work program.

"Program element." One of the major groupings of outputs of a continuing environmental program (e.g., administration, enforcement, monitoring).

"Reserve." A portion of the State's construction grant allotment which the State proposes to set aside to use for construction or permit program management or water quality management planning activities.

"Recurrent expenditures." Those expenses associated with the activities of a continuing environmental program. All expenditures, except those for equipment purchases with a unit acquisition cost of $5,000 or more, are considered recurrent unless justified by the applicant as unique and approved as such by the Regional Administrator in the assistance award.

"Work program." The document which identifies how and when the applicant will use program funds to produce specific outputs.

§ 35.110 Summary of annual process.

(a) EPA considers various factors to allot among the States the funds requested in the President's budget for each financial assistance program, except for those related to construction grants, for which Congress determines the allotments. From its construction grant allotment, the State proposes reserves for State administration and water quality management planning. The Regional Administrator issues a planning target for each program to each applicant based on the reserves and allotments.

(b) Using the planning target and guidance provided by EPA, each applicant completes a standard EPA application including a proposed work program for each environmental program for which it expects to receive EPA funding. Alternatively, an applicant prepares a consolidated work program to support several individual applications or a single consolidated application. After the applicant submits its application, the Regional Administrator reviews it and, if it meets applicable requirements, approves the application and agrees to make an award when funds are available. The Regional Administrator awards assistance from funds appropriated by Congress for that purpose.

(c) The recipient conducts its activities according to the approved application and assistance award. The Regional Administrator evaluates recipient performance to assure compliance with all conditions of the assistance award.

(d) Except for funds reserved under sections 205(g) and 205(j) of the Clean Water Act, the Administrator or Regional Administrator may use funds not awarded or committed to an applicant to supplement awards to other applicants for that program or to support a Federal program required in the absence of an acceptable State program.

§ 35.115 State allotments and reserves.

Allotments and reserves provide an objective basis for establishing planning targets and funding levels for work programs. Congress determines the construction grant allotment, from which the State proposes reserves for State administration and water quality management planning. EPA determines the allotments for the other financial assistance programs based on the President's budget request to Congress. The factors and limitations considered for each program are as follows:

(a) *Air pollution control allotment* (Clean Air Act, section 105): population, the extent of actual or potential air pollution problems, and the financial need of each agency to be funded with the State's allotment. However, no State will be allotted less than one-half of one percent or more than ten percent of the total.

(b) *Water pollution control allotment* (Clean Water Act, section 106): the extent of the State's water pollution problem.

(c) *State administration reserve* (Clean Water Act, section 205(g)): up to four percent of the State's authorized construction grant allotment as determined by Congress or $400,000, whichever is greater.

(d) *Water quality management planning reserve* (Clean Water Act, section 205(j)): not less than $100,000 nor more than one percent of the State's construction grant allotment as determined by Congress. However, for Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, a reasonable amount shall be reserved for this purpose.

(e) *Public water system supervision allotment* (Safe Drinking Water Act, section 1443(a)): the State's population, geographic area, numbers of community and noncommunity water systems, and other relevant factors. However, no State except American Samoa, Guam, the Northern Mariana Islands, or the Virgin Islands may be allotted less than one percent of the total.

(f) *Underground water source protection allotment* (Safe Drinking Water Act, section 1443(b)): the State's population, geographic area, extent of underground injection practices, and other relevant factors.

(g) *Hazardous waste management allotment* (Solid Waste Disposal Act, as amended, section 3011): the extent to which hazardous waste is generated, transported, treated, stored, and disposed of in the State and the extent of exposure of human beings and the environment to such waste.

(h) *Pesticide enforcement allotment* (Federal Insecticide, Fungicide, and Rodenticide Act, section 23): the State's population, the numbers of pesticide-producing establishments and certified private and commercial applicators, and the number of farms and their acreage.

(i) *Pesticide applicator certification and training allotment* (Federal Insecticide, Fungicide, and Rodenticide Act, section 23): the number of farms and numbers of private and commercial applicators requiring certification or recertification.

§ 35.120 Planning targets.

The Regional Administrator develops planning targets to help each applicant develop a work program. A planning target is the State's reserve or is based on the State's allotment and the Regional Administrator's evaluation of each applicant's ability to use allotted funds effectively.

§ 35.125 Program guidance.

Program guidance helps State and local agencies establish and maintain effective environmental programs which meet their particular needs and those of the national program. National program managers in Headquarters issue guidance to Regional Administrators, and Regional Administrators issue guidance to applicants.

(a) *Headquarters guidance to Regional Administrators.* Headquarters guidance is based on the President's annual budget submission to Congress and the statutory and regulatory requirements for each environmental program. The guidance contains a statement of national objectives and priorities, an explanation of the activities required of the regions, and a list of program elements and associated outputs recommended for State and local environmental programs.

(b) *Regional guidance to applicants.* Regional guidance is based on Headquarters guidance and the Regional Administrator's knowledge of environmental problems in each State in his region and evaluation of each applicant's ability to carry out the program. The guidance contains EPA's objectives and priorities, the applicant's planning target, the program elements EPA uses for budget justification and management, categories of outputs which should be part of the applicant's work program, and special conditions or limitations relevant to the applicant.

§ 35.130 Work program.

The work program is part of the application for financial assistance and is the basis for the management and evaluation of performance under the assistance award. The work program must specify the work years and amount and source of funding estimated to be needed for each program element, the outputs committed to under each program element, including any outputs required under an authorization or delegation agreement, a schedule for accomplishment of outputs, and an identification of the agency responsible for each of the elements and outputs.

§ 35.135 Budget period.

An applicant may choose its budget period in consultation with and subject to the approval of the Regional Administrator.

§ 35.140 Application for assistance.

Each applicant should submit a complete application at least 60 days before the beginning of the budget period. In addition to meeting the requirements contained in Part 30, a complete application must contain a discussion of performance to date under the existing award, the proposed work program, and a list of all applicable EPA-approved State strategies, program plans, and delegation or authorization agreements with a statement certifying that the proposed work program is consistent with them.

§ 35.141 EPA action on application.

The Regional Administrator will review each completed application and should approve, conditionally approve, or disapprove it within 60 days of receipt. When funds are available, the Regional Administrator will award assistance based on an approved or conditionally approved application. For a continuation award made after the beginning of the approved budget period, EPA will reimburse the applicant for allowable costs incurred from the beginning of the budget period, provided that such costs are contained in the approved application and that the application was submitted before the expiration of the prior budget period.

(a) *Approval.* The Regional Administrator will approve the application only if it satisfies the terms, conditions, and limitations of this subpart, 40 CFR Part 30, and relevant statutes and program regulations; if the proposed outputs are consistent with EPA guidance or otherwise demonstrated to be necessary and appropriate; and if achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance, program authority, organization, resources, and procedures.

(b) *Conditional approval.* The Regional Administrator may conditionally approve the application, after consulting with the applicant, if only minor changes are required. The Regional Administrator will include in the award the conditions which the applicant must meet to secure final approval and the date by which those conditions must be met.

(c) *Disapproval.* If the application cannot be approved or conditionally approved, the Regional Administrator will negotiate with the applicant to change the output commitments, to reduce the assistance amount, or to make any other changes necessary for approval. If negotiation fails, the Regional Administrator will disapprove the application in writing.

§ 35.143 Assistance amount.

(a) *Determining the assistance amount.* In determining the amount of assistance to an applicant, the Regional Administrator will consider the State's planning target, the extent to which the applicant's work program is consistent with EPA guidance, and the anticipated cost of the applicant's program relative to the proposed outputs.

(b) *Reduction of assistance amount.* If the Regional Administrator's evaluation of the applicant's work program indicates that the proposed outputs do not justify the level of funding requested, the Regional Administrator will reduce the assistance amount. If the evaluation indicates that the proposed outputs are not consistent with the priorities contained in EPA guidance, the Regional Administrator may reduce the assistance amount.

§ 35.145 Consolidated assistance.

Any applicant eligible to receive and administer funds from more than one assistance program may submit an application for consolidated assistance, following the process described in § 35.140. For consolidated assistance, the applicant prepares a single budget and work program covering all programs included in the application. The consolidated budget must identify each assistance program's funds. The consolidated work program must identify the extent to which each assistance program's funds support each program element. Insular Areas which choose to consolidate program assistance may be exempted from requirements of this subpart in accordance with Title V of Pub. L. 95-134.

§ 35.150 Evaluation of recipient performance.

The Regional Administrator will oversee each recipient's performance under an assistance agreement. In consultation with the applicant, the Regional Administrator will develop a process for evaluating the recipient's performance. The Regional Administrator will include the schedule for evaluation in the assistance agreement and will evaluate recipient performance and progress toward completing the outputs in the approved work program according to the schedule. The Regional Administrator will provide the evaluation findings to the recipient and will include them in the official assistance file. If the evaluation reveals that the recipient is not achieving one or more of the conditions of the assistance agreement, the Regional Administrator will attempt to resolve the situation through negotiation. If agreement is not reached, the Regional Administrator may impose any of the sanctions in 40 CFR Part 30.

§ 35.155 Reallocation.

EPA has responsibility and authority for managing all financial assistance funds effectively. To better achieve the goals of the Clean Water Act, 205(g) reserves which have not been awarded will be returned to the State's construction grant allotment to support eligible construction activities; 205(j) reserves which have not been awarded during the period of availability to the State will be reallotted to other States as construction grant funds. These funds are administered under § 35.2010 of this subchapter and are not available for reallocation under this section. For the other environmental programs, EPA will consider reallocating any unawarded funds to achieve the objectives for which Congress appropriated them.

(a) *Funds remaining after initial award.* Funds remaining in a State's allotment after an initial assistance award and commitment to that State for that year may be awarded by the Regional Administrator to any eligible applicant during the Federal fiscal year. At the end of the year, funds not awarded by the Regional Administrator will be reallocated by the Administrator to accomplish the objectives of that program.

(1) The Regional Administrator may use such funds to make supplementary awards to that State for that program.

(2) Subject to any limitations contained in appropriations acts, the Regional Administrator may use such funds to support a Federal program required by law in that State in the absence of an acceptable State program.

(3) The Regional Administrator may also use such funds to supplement awards for that program to other eligible applicants within the Region.

(b) *Funds available because of no award.* Funds remaining in a State's allotment because there is no assistance award to that State in that year may be used in two ways.

(1) First, subject to any limitations contained in appropriations acts, the Regional Administrator may use such funds to support a Federal program required by law in that State in the absence of an acceptable State program.

(2) Otherwise, the Administrator will reallocate any available program funds

to accomplish the objectives of that program.

Air Pollution Control (Section 105)

§ 35.200 Purpose.

Section 105 of the Clean Air Act authorizes assistance to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Act) to administer programs for the prevention and control of air pollution or implementation of national air quality standards. Associated program regulations are found in 40 CFR Parts 50, 51, 52, 58, 60, 61, 62, and 81.

§ 35.205 Maximum Federal share.

(a) The Regional Administrator may provide State, local, interstate, or intermunicipal agencies up to two-thirds of the approved costs of planning, developing, establishing, or improving an air pollution control program and up to one-half of the approval costs of maintaining that program.

(b) The Regional Administrator may provide State, interstate, or intermunicipal agencies which have substantial responsibility for carrying out an applicable implementation plan under Section 110 of the Clean Air Act up to three-fourths of the approved costs of planning, developing, establishing, or improving an air pollution control program and up to three-fifths of the approved costs of maintaining that program.

§ 35.210 Maintenance of effort.

(a) To receive funds under section 105, an agency must expend annually for recurrent section 105 program expenditures an amount of non-Federal funds at least equal to such expenditures during the preceding fiscal year, unless the Regional Administrator, after notice and opportunity for a public hearing, determines that the reduction is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

(b) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the assistance will not supplant non-Federal funds that would otherwise be available for maintaining the section 105 program.

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, or intermunicipal agency without consulting with the appropriate official designated by the Governor or Governors of the State or States affected.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and opportunity for a public hearing in the affected State or in one of the affected States if several are affected.

Water Pollution Control (Section 106)

§ 35.250 Purpose.

Section 106 of the Clean Water Act authorizes assistance to State and interstate agencies (as defined in section 502 of the Act) to administer programs for the prevention, reduction, and elimination of water pollution. Some of these activities may be eligible for funding under sections 205(g) and 205(j) of that Act. (See §35.300 and §35.350.) Program requirements for water quality planning and management activities are provided in 40 CFR Part 35, Subpart G.

§ 35.255 Maintenance of effort.

To receive funds under section 106, any State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-Federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

§ 35.260 Limitations.

(a) The Regional Administrator will not award section 106 funds to any State which does not monitor and compile, analyze, and report water quality data as described in section 106(e)(1) of the Clean Water Act.

(b) The Regional Administrator will not award section 106 funds to any State which does not have authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(c) The Regional Administrator will not award section 106 funds if federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act is in effect with respect to the agency.

(d) The Regional Administrator will not award section 106 funds unless the work program submitted with the assistance application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 205(g) and 205(j) of the Clean Water Act.

State Administration (Section 205(g))

§ 35.300 Purpose.

Section 205(g) of the Clean Water Act authorizes assistance to States (as defined in section 502 of the Act) for two purposes.

(a) *Construction management assistance.* The 205(g) funds may be used for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment construction grants for small communities. Construction management assistance funds may also be used for administering elements of a State's construction grant program which are implemented without Federal assistance, if the Regional Administrator determines that those elements are consistent with 40 CFR Part 35, Subpart I. Program requirements for State construction management activities under delegation are provided in 40 CFR Part 35, Subparts F and I.

(b) *Permit and planning assistance.* The 205(g) funds may be used for administering permit programs under sections 402 and 404 and for adminstering statewide waste treatment management planning programs under section 208(b)(4) of the Clean Water Act. Some of these activities may be eligible for funding under sections 106 and 205(j) of that Act. (See § 35.250 and § 35.350.) Program requirements for water quality management activities are provided in 40 CFR Part 35, Subpart G.

§ 35.305 Maintenance of effort.

To receive funds under section 205(g), a State agency must expend annually for recurrent section 106 program expenditures an amount of non-Federal funds at least equal to such expenditures during fiscal year 1977, unless the Regional Administrator determines that the reduction is attributable to a non-selective reduction of expenditures in State executive branch agencies.

§ 35.310 Limitations.

(a) The Regional Administrator will not award section 205(g) funds for construction management assistance unless there is a signed agreement delegating responsibility for administration of those activities to the State.

(b) The Regional Administrator will not award section 205(g) permit and planning assistance before awarding funds which provide for the management of a substantial portion of construction grants program. The maximum amount of permit and

planning assistance a State may receive is the amount remaining in its reserve after the Regional Administrator allows for full funding of the management of the construction grant program under full delegation.

(c) The Regional Administrator will not award section 205(g) permit and planning assistance unless the work program submitted with the assistance application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 106 and 205(j) of the Clean Water Act.

Water Quality Management Planning (Section 205(j))

§ 35.350 Purpose.

Section 205(j) of the Clean Water Act authorizes assistance to States (as defined in section 502 of the Act) to carry out water quality management planning activities. Some of these activities may be eligible for funding under sections 106 and 205(g) of that Act. (See § 35.250 and § 35.300.) Program requirements for water quality management activities are provided in 40 CFR Part 35, Subpart G. The purpose of 205(j) funds includes, but is not limited to, the following.

(a) Identification of the most cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

(b) Development of an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under (a) above.

(c) Determination of the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(d) Determination of those publicly owned treatment works which should be constructed with Federal assistance, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction.

(e) Implementation of section 303(e) of the Clean Water Act.

§ 35.355 Maximum Federal share.

The Regional Administrator may provide up to one hundred percent of the approved work program costs.

§ 35.360 Limitations.

(a) The Regional Administrator will not award section 205(j) funds to a State agency unless the agency develops its work program jointly with local, regional, and interstate agencies and gives funding priority to such agencies and designated or undesignated public comprehensive planning organizations to carry out portions of that work program.

(b) The Regional Administrator will not award section 205(j) funds to a State agency which does not report annually on the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(c) The Regional Administrator will not award section 205(j) funds unless the work program submitted with the assistance application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 106 and 205(g) of the Clean Water Act.

Public Water System Supervision (Section 1443(a))

§ 35.400 Purpose.

Section 1443(a) of the Safe Drinking Water Act authorizes assistance to States (as defined in section 1401 of the Act) to implement public water system supervision programs. Associated program regulations are found in 40 CFR Parts 141, 142, and 143.

§ 35.405 Maximum Federal share.

The Regional Administrator may provide up to seventy-five percent of the approved work program costs.

§ 35.410 Limitations.

(a) The Regional Administrator will not make an initial award of section 1443(a) funds unless the applicant has a public water system supervision program or will establish one within a year of the award and will assume primary enforcement responsibility for the State's public water systems within that year.

(b) The Regional Administrator will not award section 1443(a) funds after the initial award unless the applicant has primary enforcement responsibility for the State's public water systems.

Underground Water Source Protection (Section 1443(b))

§ 35.450 Purpose.

Section 1443(b) of the Safe Drinking Water Act authorizes assistance to States (as defined in section 1401 of the Act) to implement underground water source protection programs. Associated program regulations are found in 40 CFR Parts 122, 123, 124, and 146.

§ 35.455 Maximum Federal share.

The Regional Administrator may provide up to seventy-five percent of the approved work program costs.

§ 35.460 Limitations.

After September 30, 1983, the Regional Administrator will not award section 1443(b) funds unless the applicant has primary enforcement responsibility for the State's underground water source protection program.

Hazardous Waste Management (Section 3011)

§ 35.500 Purpose.

Section 3011(a) of the Solid Waste Disposal Act, as amended, authorizes assistance to States (as defined in section 1004 of the Act) for the development and implementation of authorized State hazardous waste management programs. Associated program regulations are found in 40 CFR Parts 122, Subparts A and B; 123, Subparts A, B, and F; 124, Subparts A and B; and 260–266.

§ 35.505 Maximum Federal share.

The Regional Administrator may provide up to seventy-five percent of the approved work program costs.

§ 35.510 Limitations.

The Regional Administrator will not award section 3011(a) funds in a State with interim or final hazardous waste authorization unless the applicant is the lead agency designated in the authorization agreement.

Pesticide Enforcement (Section 23(a)(1))

§ 35.550 Purpose.

Section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act authorizes assistance to States (as defined in section 2 of the Act) and Indian tribes to implement pesticide enforcement programs. Associated program regulations are found in 40 CFR Parts 162, 165–167, 169–170, and 172–173 and 19 CFR Part 12.

§ 35.555 Maximum Federal share.

The Regional Administrator may provide up to one hundred percent of the approved work program costs.

Pesticide Applicator Certification and Training (Section 23(a)(2))

§ 35.600 Purpose.

Section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act authorizes assistance to States (as defined in section 2 of the Act) and Indian tribes to implement programs to train and certify applicants of restricted use pesticides. Associated program regulations are found in 40 CFR Parts 162 and 170–171.

§ 35.605 Maximum Federal share.

The Regional Administrator may provide up to fifty percent of the approved work program costs.

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Tuesday
October 12, 1982

Part V

Department of Transportation

Federal Aviation Administration

Proposed Advisory Circular on Hazards Following Ground Deicing and Ground Operations in Conditions Conducive to Aircraft Icing

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular on Hazards Following Ground Deicing and Ground Operations in Conditions Conducive to Aircraft Icing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: The proposed AC published herewith provides information on and identifies hazards associated with ground deicing and ground operations in conditions conducive to aircraft icing.

DATE: Comments must identify file number AC 20–XX and be received on or before November 12, 1982.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Certification Procedures and Standards Branch, AWS–130, Aircraft Engineering Division, Office of Airworthiness, File No. AC 20–XX, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments received on the proposed AC may be inspected before and after the closing date for comments, at Room 335E, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard I. Adams, Flight Safety Research Branch, ACT–300N, FAA Technical Center, Atlantic City Airport, New Jersey 08405, telephone 609–641–8200.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC published in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the AC file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final AC.

How To Obtain Copies

Additional copies of the proposed AC may be obtained by contacting the Certification Procedures and Standards Branch, AWS–130, at the address listed above, or by calling the branch at 202–426–8305.

Issued in Washington, D.C., on October 6, 1982.

M. C. Beard,

Director of Airworthiness.

Proposed Advisory Circular

Subject: Hazaards following ground deicing and ground operations in conditions conducive to aircraft icing

Date: October 6, 1982
Initiated by: ACT–300N
AC No: 20–XX

1. *Purpose.* This advisory circular emphasizes the "Clean Aircraft Concept" following ground operations in conditions conducive to aircraft icing and provides information to assist in compliance.

2. *Related Federal Aviation Regulations (FAR) Sections.* Sections 121.629, 91.209, and 135.227.

3. *Background.* Recent accidents involving large transport and small general aviation aircraft indicate that misconceptions exist regarding the effect of slight surface roughness caused by ice accumulations on aircraft performance and flight characteristics and the effectiveness of Freezing Point Depressant (FPD) ground deicing fluids.

4. *Discussion.* Regulations were established by the Civil Aeronautics Board (CAB) in 1950 prohibiting takeoff of aircraft when frost, snow, or ice is adhering to wings, propellers, or control surfaces of the aircraft. These regulations remain in effect as cited under FAR 121.629, 135.227, and 91.209. The basis of these regulations, which are commonly referred to as the clean aircraft concept, is known degradation of aircraft performance, and changes of aircraft flight characteristics when ice formations of any type are present. These effects are wide ranging, unpredictable, and dependent upon individual aircraft design. The magnitude of these changes is dependent upon many variables and is thus unpredictable, but these changes can be significant. Wind tunnel and flight tests indicate that ice, frost, or snow formations on the leading edge and upper surface of a wing, having a thickness and surface roughness similar to medium or coarse sandpaper, can reduce wing lift by as much as 30 percent and increase drag by 40 percent. These changes in lift and drag will significantly increase stall speed, reduce controllability and alter aircraft flight characteristics. Thicker or rougher ice accumulations in the form of frost, snow, or ice deposits can have increasing effects on lift, drag, stall speed, stability, and control, but the primary influence is surface roughness relative to critical portions of an aerodynamic surface. It is therefore imperative that *takeoff not be attempted* unless it has been ascertained, as required by regulation, that all critical components of the aircraft are free of adhering snow, frost, or other ice formations.

Most transport aircraft used in commercial transportation as well as some other aircraft types are certified for flight in known icing conditions. Aircraft so certified have been designed and demonstrated to have the capability of penetrating supercooled cloud icing conditions in the forward flight regime. This capability is provided by ice protection equipment installed on the critical areas of critical surfaces (usually the leading edge) or demonstration that ice formed under supercooled cloud icing conditions on certain components will not significantly affect aircraft performance, stability and control. Ice, frost, or snow formed on these surfaces on the ground have a totally different effect on aircraft flight characteristics than ice formed in flight. Exposure to weather conditions on the ground that are conducive to ice formation can cause accumulation of frost, snow, or ice on areas of the aircraft that are not protected by anti-icing or deicing equipment that is designed and certified for ground use. In addition, aircraft are considered airworthy and are certificated by the FAA only after extensive analyses and testing have been accomplished. With the exception of analyses and testing to ascertain the flight characteristics of an aircraft during flight in icing conditions, all analyses and certification testing are conducted with a clean aircraft flying in a clean environment. Therefore, if surface roughness is present (for any reason including ice formations), the airworthiness of the aircraft may be invalid and no attempt should be made to fly the aircraft until it has been restored to the clean configuration. The ultimate responsibility for this determination rests with the pilot in command of the aircraft.

Common practice developed by the aviation community over many years of operational experience is to deice an aircraft prior to takeoff. Various techniques of ground deicing were also developed. The most modern of these techniques is use of FPD fluids to aid the ground deicing process and to provide a protective film of FPD to delay formations of frost, snow, or other ice.

In scheduled airline operations where large numbers of aircraft are dispatched, the process of assuring airworthiness must be a team effort where each member of the team has specific duties and responsibilities. In the case of private aircraft operations, all functions may be performed by only one person, the pilot. In all cases, the pilot has the ultimate responsibility of ascertaining that his aircraft is in a condition for safe flight.

The only method currently known of positively ascertaining that an aircraft is clean prior to takeoff is by close visual inspection. Under conditions of precipitation or where moisture can be splashed, blown, or sublimated onto critical surfaces in subfreezing weather, many factors influence whether ice, frost, or snow may accumulate and result in surface roughness. These variables are described in appendix C of this advisory circular (AC) but for convenience are listed as follows:

Ambient Temperature
Aircraft Surface Temperature
Presence of Deicing Fluid
Deicing Fluid Type
Deicing Fluid Aqueous Solution (Strength)
Precipitation Type and Rate
Deicing Fluid Application Procedure
Relative Humidity
Solar Radiation
Operation in Close Proximity to other Aircraft, Equipment, and Structures

Operation on Snow, Slush, or Wet Surfaces
Wind Velocity and Direction
Aircraft Component Inclination Angle, Contour, and Surface Roughness

Aircraft maintenance and operations personnel do not have the capability to quantify the occurrence or the effects of the many variables that can influence whether or not ice, frost, or snow may form prior to takeoff, the surface roughness of ice formations, nor the effect that surface roughness may have upon aircraft perfromance and handling characteristics. Therefore, the time that may be considered a safe interval between ground deicing and takeoff can not be accurately estimated. Calculations of time incorporating the effects of only a few of these variables; (e.g., ambient temperature of 20° F, deicing fluid strength of 50 percent, precipitation rate of ½ inch/hour, assumed water content of snow of 0.1, and assumed surface film thickness of FPD fluid of 0.1 mm) reveals that aircraft surfaces may remain free of ice formations (onset of FPD fluid crystalization) for approximately 10 minutes. Other variables listed above could reduce this time. Neither the pilot in command nor ground support staffs have even these limited facts on hand, therefore, quantitiative judgments of time available between the ground deicing process and takeoff *cannot* be made.

The essence of flight safety following ground operations in conditions conducive to icing is the clean aircraft concept. To understand the need for the clean aircraft concept requires thorough knowledge of: (1) The adverse effects that ice, frost, or snow can have on aircraft performance and handling qualities; (2) the various procedures that are available for aircraft ground deicing; (3) the capabilities and limitations of these procedures; (4) the variables that will influence the effectiveness of these procedures; (5) the critical areas of the particular aircraft; and (6) recognition that final assurance for a safe takeoff rests in pretakeoff inspection. Additional information to assist in development of this understanding and knowledge may be found in the appendices of this AC. The success of the aviation community to date is attributed to many years of experience on the part of many companies where this knowledge has been gained, through experience, and passed on in the form of policy, procedures, quality assurance programs, and training programs.

5. *Acceptable Practices.* a. *General.* The clean aircraft concept is essential. FAR's make the clean aircraft concept law. This law exists for flight safety reasons. The FAR states a general requirement but allows operators to comply with the requirement in an appropriate manner, depending upon local circumstances. The clean aircraft concept has been in effect since 1950. Many techniques of complying with the clean aircraft concept have been developed over the years by the aviation industry. Many of these techniques were developed prior to 1950 because of the need recognized by the aviation community. The consensus of the aviation community and the conclusion reached by the FAA is that the only method of assuring flight safety, following ground operations in conditions conducive to aircraft icing, is by close inspection prior to takeoff to ascertain that critical aircraft components are clean (free of ice, frost or snow formations) or a determination that any formations are not adhering to critical surfaces and will blow off in the early stages of takeoff roll. This consensus is regardless of the use of currently available FPD deicing fluids or the use of manual techniques of deicing. FPD fluids commonly used today should not be considered to have anti-icing qualities for a finite period of time because a multitude of variables make it impractical to estimate that time. FPD fluids are known to be effective in retarding the formation of frost, snow, or ice and in this sense may be considered to have anti-icing qualities (to prevent the formation of ice) for a period of time during ground storage (overnight or during brief layover) thus making the process of deicing (removing ice formations) simpler and in many cases negating further deicing or treatment. It is emphasized, however, that the need for close inspection prior to takeoff remains. The following paragraphs are intended to provide suggested methods of assuring the clean aircraft concept.

(1) *Aircraft Deicing Process*—An aircraft may be cleaned of ice formations by any suitable manual method, by use of hot water, by use of FPD fluids, or mixtures of FPD fluids and water. The deiced aircraft should then be inspected to assure that all ice formations are removed, that residual water is removed or that residual water is mixed with an FPD fluid whose mixture will have a freeze point not greater than 20° F below ambient or aircraft surface temperature whichever is lower. FPD freeze point can be accurately determined using refractice index techniques. FPD fluid manufacturers can suggest or supply suitable equipment.

(2) In conditions of precipitation or high humidity, when aircraft surface temperatures are below freezing, surfaces should be treated with FPD fluid to retard the formation of ice prior to and during takeoff. Aqueous solutions of FPD fluids may be used, however, the mixture used should have a freeze point (onset of crystallization) of not greater than 20° F below ambient or surface temperature, whichever is less.

(3) *Preflight Inspection*—Preflight inspection should be performed immediately following or during the ground deicing process. Areas to be inspected depend upon the aircraft design and should be identified in an inspection checklist. The inspection checklist should be prepared by the aircraft manufacturer. This checklist should however include the following general items:

- Wing leading edges, upper surfaces and lower surfaces
- Stabilizing device leading edges, upper surfaces, and lower surfaces
- High lift devices such as leading edge slats and leading or trailing edge flaps
- Wing lift spoilers
- All control surfaces and control balance bays
- Propellers
- Rotor Blades
- Engine Inlets
- Windshields and other transparencies necessary for visibility
- Fuselage sections forward of stabilizing, control and lifting surfaces, propellers, rotors, or engine air inlets
- Exposed instrumentation devices such as angle-of-attack vanes, pitot-static pressure probes, and static ports
- Cooling air intakes/inlets/exhausts
- Undercarriage

(4) Once it has been determined through pre-flight inspection that the aircraft is clean and adequately protected, takeoff should be performed as soon as possible. This is especially important in conditions of precipitation or high relative humidity.

(5) *Pretakeoff Inspection.* Just prior to taking the active runway for takeoff or just prior to initiating takeoff roll, a visual pretakeoff inspection should be made. The components to be inspected depend upon aircraft design. In some aircraft, the entire wing and portions of the empenage are in view of the pilot, crewmember, or passenger. In other aircraft, these surfaces are so remote that only portions of the upper surface of the wings are in view. Undersurfaces of wings and undercarriage are not viewable in any but highwing type aircraft. A practice in use by some operators is to perform close visual inspection of wing surfaces, leading edges, engine inlets, and other components of the aircraft that are in view either from the cockpit or cabin (whichever provides maximum view). If surfaces have not been treated with FPD fluid, evidence of melting snow and possible freezing is sought. Also evidence of any ice formation that may have been induced by taxi operations is sought. If the aircraft has been treated with FPD fluids, evidence of a glossy smooth and wet surface is sought. If, as a result of these inspections, evidence of ice, snow, or frost formations is observed, the aircraft should be returned to a maintenance area for additional deicing.

The fact that it is impractical for an aircraft crewmember to disembark at the end of a runway and perform pretakeoff inspections, means that he must perform that inspection from the best vantage point available from within the aircraft. He may elect to open windows, doors, or hatches to improve his view, but in many aircraft even this is impractical. In the darkness of night he must rely upon wing and other aircraft illumination lights that may not provide sufficient reflection to make appropriate visual observations. He may, where practical, call upon the assistance of qualified ground personnel. If under any circumstance, the pilot in command cannot ascertain that the aircraft is clean, he should not attempt takeoff.

Conducting pretakeoff inspection in the manner described above relies upon the pilot in command to be knowledgeable of ground deicing procedures, that the ground deicing process was conducted in a thorough and uniform manner, and that critical surfaces or components not in view during pretakeoff inspection will also be clean. *The decision to takeoff, following pretakeoff inspection remains the responsibility of the pilot in command.*

b. *Common practices or suggested practices necessary to assure the pilot has every advantage for his judgements:*

(1) Training programs to continually update pilots on the hazards of winter operations, adverse effects of ice formations on aircraft performance and flight characteristics, proper use of ice protection equipment, ground deicing procedures, and preflight and pretakeoff inspection procedures following ground deicing or operations in conditions conducive to aircraft icing.

(2) Training programs for maintenance personnel to assure thorough knowledge of the adverse effects of ice formations on aircraft performance and flight characteristics, critical components and specific ground deicing procedures for each aircraft type.

(3) Quality assurance programs to assure that FPD fluids being purchased and used are of the proper characteristics, that proper ground deicing procedures are utilized, that all critical areas are inspected and that all critical components of the aircraft are clean prior to departure.

(4) Thorough planning of ground deicing activities to assure that proper supplies and equipment are available for forecast weather conditions and responsibilities are specifically assigned and understood. This is to include maintenance service contracts.

(5) Monitor weather conditions very closely to assure that planning information remains valid during the ground deicing process and subsequent aircraft operations. FPD fluids, deicing procedures and departure plans should be altered accordingly.

(6) Use of FPD solutions that will be effective for as long a period as possible under the prevailing conditions.

(7) Deicing areas in view of the pilot (from inside the aircraft) first so that during pretakeoff inspection he may have assurance that other areas of the aircraft are clean since areas deiced first will generally freeze first.

(8) Use of the two-stage deicing process where ice deposits are first removed and then all critical components of the aircraft coated with a very rich mixture of FPD fluid to prolong effectiveness.

(9) Thorough coordination of the ground deicing process to assure that final treatments are provided just prior to takeoff.

(10) Use of remote sites near the take-off position where feasible for deicing to reduce the time between deicing and takeoff or to provide additional FPD fluid to prolong effectiveness.

(11) Use of multiple aircraft deicing units for faster and more uniform deicing during precipitation.

(12) Do not use FPD fluids that are not approved for use by the aircraft manufacturer or that have not been subjected to materials compatibility determinations.

(13) Do not use unproven FPD fluids. Some fluids may have characteristics that impair aircraft performance and flight characteristics or cause control surface instabilities.

(14) Do not use substances that are approved for use on pneumatic boots (to improve deicing performance) for other purposes unless such uses are approved by the aircraft manufacturer.

C. *Suggested practices for pilots to assure the clean aircraft concept.*

(1) Be knowledgeable of the adverse effects of surface roughness on aircraft performance and flight characteristics.

(2) Be knowledgeable for ground deicing practices and procedures being used to deice your aircraft whether this service is being performed by your own company, a service contractor, or a fixed-base operator.

(3) Do not allow deicing unless you are familiar with the ground deicing practices and quality control procedures of the service organization.

(4) Be knowledgeable of critical areas of your aircraft and assure these areas are properly deiced, proper precautions are being taken during the deicing process to avoid damage to aircraft components, and proper preflight inspections are performed.

(5) Be knowledgeable of ice protection system function, capabilities, limitations, and operation.

(6) Perform preflight inspections as required.

(7) Be aware that no one can estimate effectiveness time of an FPD deicing treatment because of the many variables that can influence this time.

(8) Be knowledgeable of the variables that can reduce time of effectiveness and their general effects.

(9) Assure the deicing or the final treatment is performed at the last possible time prior to taxi to the takeoff position.

(10) Do not start engines, propellers, or rotor blades until it has been ascertained that all ice deposits are removed. Ice particles shed from rotating components under centrifugal and aerodynamic forces can be lethal.

(11) Be aware that certain operations may produce recirculation of ice crystals, snow or moisture.

(12) Be aware that operations in close proximity to other aircraft can induce snow, other ice particles, or moisture to be blown onto critical aircraft components, or allow dry snow to melt and refreeze.

(13) Do not takeoff if snow or slush is observed splashing onto critical areas of the aircraft such as wing leading edges during taxi.

(14) Always perform pretakeoff inspections just prior to takeoff.

(15) Do not takeoff if positive evidence of a clean aircraft cannot be ascertained.

Appendix A

Related FAA Publications, Training Material, and Other Reading Material

1. Related FAA Publications.

- Air Carrier Operations Bulletin (ACOB), No. 7–81–1, Aircraft Deicing and Anti-Icing Procedures dated April 10, 1981, DOT/FAA Order 8430.17, Change 21
- ACOB, No. 7–76–9, Aircraft Control and Lifting Surfaces—Cold Weather Operations, October 20, 1976
- ACOB, No. 7–76–11, Engine Ice Accumulation—Ground Idle (Formerly Air Carrier Operations Alert, No. 70–9), October 20, 1976
- ACOB, No. 7–76–12, Turbojet Aircraft Engine Icing During Prolonged Ground Operations in Icing Conditions (Formerly Air Carrier Operations Alert No. 69–3), October 20, 1976
- ACOB, No. 7–76–13, Takeoff Warning Systems During Cold Weather Operations, October 20, 1976
- ACOB, No. 7–76–2, Water/Snow Entering Parked Boeing 727 Aircraft Causing Electrical Power Loss, October 20, 1976
- ACOB, No. 7–76–1, Winter Operations Under FAR 121 and 127 (Formerly Air Carrier Operations Bulletin No. 68–15), October 20, 1976
- Air Carrier Operations Alert (ACOA), No. 67–3, Aircraft Control and Lift Surfaces—Cold Weather operations
- ACOA, No. 69–3, Turbojet Aircraft Engine Icing During Prolonged Ground Operations in Icing Conditions
- ACOA, No. 70–9, Engine Ice Accumulation—Ground Idle
- Air Carrier Maintenance Bulletin (ACMB) No. 115, Deicing of Aircraft with Engines Operating
- ACMB 127, Aircraft Deicer Fluids
- ACMB 155, Winter Operation of Aircraft
- AC 00–61, Aviation Weather, March 3, 1975
- AC 00–45B, Aviation Weather Services, 1979
- AC 20–73, Aircraft Ice Protection, April 21, 1971
- AC 20–93, Flutter Due to Ice or Foreign Substance On Or In Aircraft Control Surfaces, January 29, 1976
- AC 20–113, Pilot Precautions—Icing Problems
- AC 20–106, Aircraft Inspection for the General Aviation Aircraft Owner
- AC 61–84A, The Role of Pre-Flight Preparation, December 1, 1980
- AC 91–6A, Water, Slush, and Snow on the Runway
- AC 91–13C, Cold Weather Operation of Aircraft, July 24, 1979
- AC 91–51, Airplane Deice and Anti-Ice Systems, September 15, 1977
- AC 135–9, FAR Part 135 Icing Limitations, May 30, 1981
- AC 121–12, Wet or Slippery Runways
- AC 150/5380–4, Ramp Operations During Periods of Ice and Snow Accumulations
- FAA RD–80–50, Engine Inlet Anti-Icing System Evaluation Procedure (Report)
- ASF 140–75–3, Report of Propulsion Conference and Environmental Workshop
- Aircraft Ice Protection, Report of Symposium, April 28–30, 1969
- FAA General Aviation News Article "Rime Without Reason"
- FAA Pamphlet "Weather (Pilot's) How It Is Forecast"
- FAA Pamphlet "The Weather Decision"

2. Training Material: Written Test Guides.

- AC 61–8C, Instrument Rating, Airplane
- AC 61–1, Air Transport Pilot
- AC 61–21A, Flight Training Handbook
- AC 61–23B, Pilots Handbook of Aeronautical Knowledge
- AC 61–31A, Gyroplane Pilot-Private and Commercial
- AC 61–70, Flight Instructor, Instrument Airplane
- AC 61–71, Commercial Pilot, Airplane
- AC 61–72, Flight Instructor, Airplane
- AC 61–73, Private/Commercial Pilot, Rotorcraft, Helicopter
- AC 61–74, Flight Instructor, Rotorcraft, Helicopter

- AC 61–75, Flight Instructor, Glider
- AC 61–81, Private/Commercial, Pilot—Glider
- Exam-O-Gram Number 21, "Flying Into Unfavorable Weather"
- Exam-O-Gram Number 28, "Factors Affecting Stall Speed"
- DOD (USN) Film, "Ice Formation On Aircraft"
- FAA Film, "Some Thoughts on Winter Flying"
- FAA Slide Presentation, "Fog, Stratus, and Icing"
- FAA Slide Presentation, "Thunderstorms and Turbulence"
- DOD Training Circular, Number 1–12, "Cold Weather Flying Sense," January 1978

3. Other Related Information.

- SAE, AIR–1335, Ramp Deicing
- FAA Film, "The Cold Front"
- FAA Film, "The Warm Front"
- AOPA Article, "The Icing Options," AOPA Pilot, September 1981
- Wing Surface Roughness, Cause, and Effect by Ralph E. Brumby, Principal Engineer Aerodynamics published in Issue No. 32 of DC Flight Approach, January 1979
- Methods of Prediction of the Influence of Ice on Aircraft Flying Characteristics by M. Ingelman Sundberg, O. K. Trunov, and A. Ivaniko; a joint report from the Swedish-Soviet Working Group on Scientific-Technical Cooperation in the Field of Flight Safety, Report No. JR–1, 1977
- Wind Tunnel Investigations of the Hazardous Tail Stall Due to Icing by M. Ingelman-Sunberg and O. K. Trunov; a joint report from the Swedish-Soviet Working Group on Scientific-Technical Cooperation in the Field of Flight Safety, Report No. JR–2, 1979
- A Study of Some Methods and Means for Protecting Aircraft Ground Icing by O. K. Trunov and T. Aaro; a joint report from the Swedish-Soviet Working Group on Scientific-Technical Cooperation in the Field of Flight Safety, Report No. JR–4, 1980
- Roughness Penalties for Flight Simulators, P. Haines and J. K. Luers, University of Dayton Research Institute, Dayton, Ohio, presented to the AIAA 20th Aerospace Sciences Meeting, January 11–14, 1982, Orlando, Florida
- 737 Wing Leading Edge Condition published in July-September 1981 issue of Boeing Airliner Magazine
- 737 Wing Leading Edge Condition—Part II, published in the October-December 1981 issue of Boeing Airliner Magazine
- Mirabel Deicing Project 1978–1979, Airports and Construction Services Directorate, Airport Facilities Branch, Transport Canada, Air, Report No. TR 2159, May 1979

Appendix B—Methods of Estimating Freezing Point Depressants (FPD) Fluid Effectiveness

Many variables can influence the effectiveness of freezing point depressant (FPD) fluids, as discussed in appendix C of this advisory circular (AC), that make it impractical, if not impossible, to estimate the time available following deicing processes. However, during efforts to ascertain whether or not accurate estimates could be made, mathematical relationships were developed to allow estimates to be made using only a few known or assumed parameters. This appendix contains the rationale for these mathematical relationships only for the purpose of providing the basis of estimates presented in the body and appendix C of this AC. It is emphasized that the mathematical relationships derived herein are an oversimplification of the problem. *Extreme caution is emphasized that these relationships not be used for estimating time available between deicing and takeoff or as a substitute for the clean aircraft concept or pretakeoff inspections.*

Rationale

To estimate the time of effectiveness of FPD fluids in conditions of precipitation, several parameters must be known or assumed. To simplify this rationalization, figure B–1 depicts a segment of a surface containing a film of FPD fluid of a certain depth (t_f), and of a certain mixture M_1 (% by weight of FPD in water). This fluid will freeze (begin to crystallize) at a given fluid temperature (t_f) when its mixture (M_2) reaches the freeze point (onset of crystallization). That is to say that at a given t_f an additional amount of water must be mixed with the FPD fluid to further dilute the mixture to M_2. Precipitation in the form of snow, sleet, hail, freezing rain or drizzle or any other source of water such as dew, frost, spraying, splashing can dilute the FPD mixture. If the rate of addition of water is known (R_w) the time to reach M_2 can be estimated.

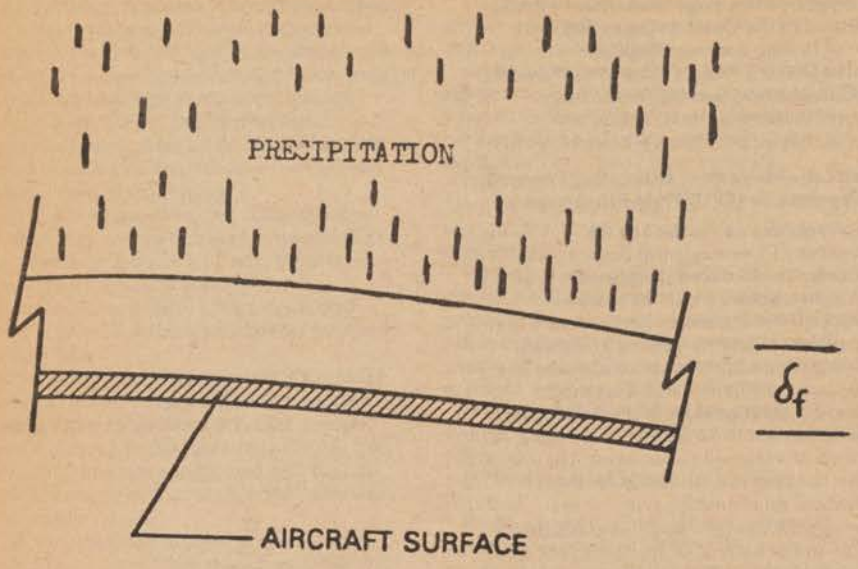

FIGURE B–1

To further simplify this rationalization, figure B–2 depicts schematically the relationships of the various parameters.

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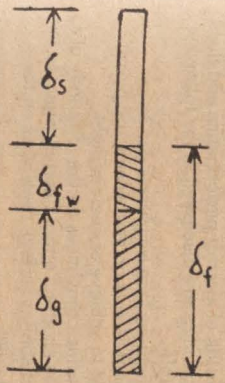

FIGURE B-2

where:

δ_f = Original fluid film thickness

δ_g = Quantity of FPD fluid (glycol) in the FPD/water mixture

δ_{f_w} = Quantity of water in the original FPD/water mixture

δ_s = The quantity of water needed to further dilute the mixture

M_1 and M_2 can then be calculated as follows:

M_1 = Is the percentage of FPD in the mixture

$$= \frac{\delta_g}{\delta_f}$$

$$M_2 = \frac{\delta_g}{\delta_f + \delta_s} = \frac{\delta_g}{\delta_{f_w} + \delta_g + \delta_s}$$

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From this relationship the amount of water needed to be added to the FPD fluid mixture can be determined since:

$$\delta_s = \frac{\delta_g}{M_2} - \delta_f$$

$$\delta_g = \delta_f M_1$$

$$\delta_s = \frac{\delta_g}{M_2} - \delta_f = \frac{\delta_f M_1}{M_2} - \delta_f = \delta_f \left(\frac{M_1}{M_2} - 1\right)$$

If a rate of addition of water (R_w) is known, the time (T) required to add the amount of water can be estimated:

$$T = \frac{\delta_s}{R_w} = \frac{\delta_f}{R_w}\left(\frac{M_1}{M_2} - 1\right)$$

For sample calculation assume:

δ_f = 0.1 mm

R_s = 1.0 in/hour

R_w = .1 R_s = 0.1 in/hour

M_1 = 90% ethylene glycol

t_a = +20°F

Under these assumptions M_2 can be determined by referring to the phase diagram (figure 1, Appendix C of this report) and at 20°F it can be seen that the mixture of ethylene glycol that will begin to freeze at 20°F is 16%. Therefore, M_2 = 0.16 and under the above assumptions, time can be estimated as follows:

$$T = \frac{0.1 \text{ mm}}{0.1 \text{ in/hr}} \left\{\frac{0.9 - 1}{0.16}\right\} \left\{\frac{\text{in.}}{25.4 \text{ mm}}\right\} \left\{\frac{60 \text{ min.}}{\text{hr.}}\right\}$$

$$= 2.36 \left(\frac{0.1}{0.1}\right)\left(\frac{0.9}{0.16} - 1\right) = 10.91 \text{ min.}$$

Appendix C—General Information Relating to Ground and Flight Operations in Conditions Conducive to Aircraft Icing

1. Introduction

This advisory circular (AC) deals with the hazards following ground deicing and ground operations in conditions conducive to aircraft icing. This appendix provides general information necessary for overall understanding of these hazards and includes causes and effects of ice formations (induced on the ground or in flight) as well as ground related issues such as: methods of ground deicing, capabilities and limitations of freezing point depressant (FPD) ground deicing fluids, and discussions of variables that can influence the effectiveness of ground deicing fluids.

2. Conditions Conducive to Aircraft Icing

a. Aircraft on the ground or in flight are susceptible to accumulation of ice formations under various atmospheric and operational conditions. Aircraft in-flight can encounter a variety of atmospheric conditions that will individually or in combination produce ice formations on various components of the aircraft. These conditions include:

(1) *Supercooled Clouds*—Clouds containing water droplets (below 32°F) that have remained in the liquid state. Supercooled water droplets will freeze upon impact with another object. Water droplets can remain in the liquid state at ambient temperatures as low −40°F. The rate of ice accretion on an aircraft component is dependent upon many factors such as droplet size, cloud liquid water content, ambient temperature, and component size, shape, and velocity.

(2) *Ice Crystal Clouds*—Clouds existing usually at very cold temperatures where moisture has frozen to the solid or crystallization state.

(3) *Mixed Conditions*—Clouds at ambient temperatures below 32°F containing a mixture of ice crystals and supercooled water droplets.

(4) *Freezing Rain and Drizzle*—Precipitation existing within clouds or below clouds at ambient temperatures below 32°F where rain droplets remain in the supercooled liquid state.

(5) *Frozen precipitation such as snow, sleet, or hail.*

b. Aircraft on the ground, during ground storage of ground operations, are susceptible to many of the conditions that can be encountered in flight in addition to conditions peculiar to ground operations. These include:

(1) Supercooled ground fog and ice cloud.s

(2) Operation on ramps, taxiways, and runways containing moisture, slush, or snow.

(3) Blown snow from accumulations on snowdrifts, other aircraft, buildings, or other ground structures.

(4) Snow blown by ambient winds, other aircraft, or ground support equipment.

(5) Recirculated snow made airborne by engine, propeller, or rotor wash. Operation of jet engines in reverse thrust, reverse pitch propellers, and helicopter rotor blades are common causes of snow recirculation.

(6) Conditions of high relative humidity that may produce frost formations on aircraft surfaces having a temperature at or below the frost point. Frost accumulations are common during overnight ground storage and after landing where aircraft surface temperatures remain cold following descent from higher altitudes. This is a common occurrence on lower wing surfaces in the vicinity of fuel cells. Frost formations can also occur on upper wing surfaces in contact with cold fuel.

3. The Effects of Ice, Snow, and Frost Formations on Aircraft Performance and Flight Characteristics.

a. *General*—During flight operations ice will form on leading edges of various components, within forward facing air intakes (e.g., engine inlets) and frontal areas of the airframe. During ground storage or operations, ice will form on other portions of aircraft components such as upper surfaces of wings, fuselages, engine nacelles, horizontal stabilizer surfaces, and control surfaces. The effects that inflight or ground accreted ice formations will have on aircraft performance and flight characteristics are many, are varied and are highly dependent upon aircraft design, ice surface roughness, ice shape, and areas covered. These effects will generally be reflected in the form of decreased thrust, decreased lift, increased drag, increased stall speed, trim changes, altered stall characteristics and handling qualities. Slight weight increases will also occur; however, the effect of weight increase (with the exception of heavy snow and freezing rain deposits during ground operations) is usually insignificant in comparison to aerodynamic degradation.

b. *Aircraft Certification for Flight in Known Icing Conditions*—

(1) Most commercial transport aircraft and many other aircraft types are designed for safe flight in most atmospheric icing conditions that can be encountered in conventional flight: i.e., from takeoff to landing. *They are not certified for takeoff or flight with ice formed as a result of ground storage or operations.* Such formations must be removed and the aircraft sustained in a clean configuration prior to initiation of takeoff and throughout the takeoff roll. Although several helicopters are now in the initial phases of icing certification, no commercial helicopters are currently certified for flight in known icing conditions. Before an aircraft is certified to fly in known atmospheric conditions conducive to icing that capability must be demonstrated to FAA. This is accomplished through extensive analyses and flight testing. If an aircraft is not so certified it should not be intentionally flown in atmospheric icing conditions. Aircraft that are certified for flight in icing conditions are equipped with ice protection systems to reduce the adverse effects of ice formations, either by preventing the formation of ice (anti-icing) or by periodically removing ice (deicing). Some components of some aircraft certified for flight in known icing conditions do not require ice protection equipment. Aircraft so certified have been demonstrated to be capable of safe flight with ice of certain shapes adhering to critical areas. Aircraft certified for flight in known icing conditions are capable of sustained operations in supercooled cloud conditions. Their engines and engine inlets are capable of operation without serious performance degradation in supercooled clouds. Some aircraft may have limited capability for flight in freezing rain and drizzle, in mixed conditions or pure ice crystal clouds, however, ice protection systems are certified only for operation under the supercooled cloud conditions noted in paragraph 2.a(1) above. Small aircraft are generally less tolerant to freezing rain conditions than large aircraft.

(2) Many aircraft in service today (generally small aircraft) have ice protection equipment installed, but are not certified for flight in known icing conditions. Aircraft of this type have only been demonstrated to show the equipment is nonhazardous for flight in nonicing conditions with the equipment installed. Aircrews should be aware of these limitations and be cautious because this type equipment may not provide safe flight during icing encounters.

c. *Effects of Ice Formations.*—

(1) Wind tunnel and flight testing conducted in the past under research, development, and certification efforts, as well as operational experience, have shown that ice formations on various aircraft components can have very significant and sometimes devastating effects on aircraft equipment operation, aircraft performance, and flight characteristics. Components of an aircraft normally affected by ice formations are highly dependent upon aircraft design, however, they generally fall in the following categories:

Lifting devices
Stabilizing devices
Control surfaces
Engine inlets
Engines
Propellers
Rotor blades
Anti-torque devices
Windshields and other transparent structures
Cooling air inlets
Fuselage sections
Antennas
Undercarriage devices

(2) The effects of ice formations on some of these components and the contribution to degradation of aircraft performance and flight characteristics are discussed in the following paragraphs.

(a) Slight surface roughness can have significant effects on stall speed and power required to achieve or sustain flight.

(b) Surface roughness on the afterbody of a wing has an effect approximately equal to the effect of similar surface roughness on the leading edge.

(c) Increased surface roughness, due to ice formation, on wing leading edges and afterbodies will produce additional drag and further reduce lift.

(d) Due to increased stall speed, maneuvers should be more gentle and air speed margin during approach should be increased.

(e) Stall angle-of-attack will decrease and in some aircraft stall will occur prior to activation of stall warning devices.

(f) Stall characteristics will change and, depending upon aircraft design, the nature of

ice formations can either cause violent stall or a slower progression of stall. In some aircraft pitch-up tendencies may be greater and roll-off tendencies can be exaggerated.

(g) Controllability may be reduced requiring more stick deflection for maneuvers or stall recovery.

(h) Power available may be reduced due to ice formations on propellers or jet engine inlets.

(i) Ice or excessive quantities of FPD fluid have been known to cause control surface flutter.

(j) Trim effectiveness can deteriorate with the accumulation of ice on unprotected surfaces.

(k) Power failures may occur due to carburetor icing or ingestion of ice particles into jet engines.

(l) Severe vibrations may occur due to asymmetric shedding of ice from propellers or rotor blades.

(m) Control surfaces such as ailerons, elevators, and wing spoilers can freeze inplace if water deposits, snow, and FPD fluids are not properly cleaned or drained from critical areas.

(n) Wing flaps may be damaged if retracted with ice formations adhering to critical areas.

(o) Landing gear mechanisms may be damaged or frozen in place if not properly cleared of ice formations.

(p) Forward visibility may be lost or significantly reduced if windshield anti-icing systems are not available or are not properly utilized.

(q) Radio, radar, and other communication and navigation antennas may be damaged or efficiency reduced due to ice formations.

(r) Ventilation, air conditioning, and other air inlets can be blocked or flow restricted.

(s) Ice dislodged from fuselage sections, antennas and other components forward of engine inlets and other critical components can produce damage.

(t) Ice formations, under certain conditions, may not have noticeable effects on aircraft performance and flight characteristics, however, these effects may become quite apparent in the event of engine failure or other emergencies.

(u) Flight, engine, and other instruments are subject or error if ice formations exist on external probes, in pressure lines, or on areas adjacent to external probes. Operational experience indicates that typical sources of error are icing of pitot-static probes used for airspeed, altitude, and engine pressure ratio measurements.

(v) Automatic systems that utilize external signal sources such as AFCS, auto-pilots, autothrottle speed command systems, or stability augmentation systems may be adversely affected by ice formations on or in the vicinity of external sensors.

(w) Residual moisture on door and cargo hatch seals may freeze under certain conditions causing leaks and seal damage.

4. Methods of Deicing or Cleaning Ice from Aircraft Surfaces

Ground deicing procedures have been under development, Practically speaking, since the time of the invention of the aircraft. Early methods employed the use of hangers to avoid exposure to the elements or use of wing covers and covers for other critical components such as windshields, engine air intakes, pitot probes, etc. But these devices were useful only to lessen the extent of work required to remove frost, snow, or other ice formations from the aircraft. Various devices such as brooms, brushes, ropes, squeeges, fire hoses, or other devices were used to remove dry snow accumulations but caution had to be exercised to preclude damage to aircraft skins and other critical components. Common sense prevailed. Many of these manual methods are still used today for both small and large aircraft. As larger aircraft were introduced and the numbers of air carrier fleets and scheduled flights increased, more expeditious and less costly procedures were developed. Thus, freezing point depressant (FPD) fluids were introduced to prevent or retard the formation of frost during overnight storage, to assist in melting and removal of frost, snow, or other ice formations such as would develop as a result of freezing rain or drizzle or for assisting in the removal of ice or frost formations accumulated during a previous flight.

Various methods of applying FPD fluids were utilized, such as mopping the fluid on the surface requiring treatment from a bucket, use of hand pumps attached to a supply tank and spreading the solution with a mop, brush or other suitable devices to, in time, melt the ice to the extent that it could be removed using manual means.

These manual methods of deicing provided a capability, in clear weather, to clean an aircraft adequately to allow a safe takeoff and flight. In inclement, cold weather conditions, however, the only alternative was to place the aircraft in a protected area such as a hangar to perform the cleaning process by whatever means were available. In freezing precipitation conditions, takeoff had to be initiated almost immediately following removal from the protected area. Common practice developed was to clean the aircraft in the hangar and provide a protective coating of FPD fluid to protect the aircraft from ice or snow accumulation prior to takeoff.

Many of these techniques remain in use today depending upon the local facilities and services that exist. However, most modern airports have traffic conditions and limitations of hangar space, that for the most part preclude indoor ground deicing. These airports usually have one or more fixed base operators who have the equipment, capability, and experience to clean the aircraft and provide brief protection to allow safe takeoff to be performed. Many airlines have prepositioned ground deicing equipment for ramp deicing at major airports where icing conditions are prevalent in the United States, Canada, and European countries. Several manufacturers of various types of aircraft ground deicing equipment exist today to meet the ground support equipment demands of the aviation community. These ground support equipments vary in types from simple trailers hauling a 55 gallon drum of FPD fluid with a wobble pump and mop to exotic equipment capable of heating and dispensing large quantities of water and deicing fluid and capable of elevating deicing personnel to heights necessary to have access to any area of the largest of today's aircraft. This technology exists and it is believed that any demand for aircraft ground deicing can be readily met by the ground support equipment industry.

Although modern and sophisticated ground support equipment exists, cost considerations sometimes dictate combination of ice removal methods. For example, heavy accumulations of snow may be more cost effectively removed using brooms, brushes, ropes, fire hoses, and other techniques followed by final cleaning with aqueous solutions of FPD fluid. Again, common sense, experience, and planning prevail to make the aircraft ground deicing process a cost effective and safe operation. With the rising cost of petroleum products, the primary base of most commonly used aircraft deicing fluids, the expense of FPD fluid deicing has become a very significant parameter in the final decision process. An answer to this problem has been developed in recent years employing use of very hot water. Some manufacturers of such equipment have conducted extensive testing and evaluation to develop and perfect the procedures, precautions, and recommended aqueous FPD fluid mixtures necessary for cost effective, but safe, deicing. However, an understanding of the equipment, the characteristics, and limitations regarding use of FPD fluids is essential to assure safe winter operations.

5. Characteristics of Freezing Point Depressant (FPD) Aircraft Ground Deicing Fluids

Deicing fluid manufactured in accordance with MIL–A–8243C is by specification 3 parts ethylene glycol and 1 part propylene glycol mixed with small quantities of water, corrosion inhibitors and wetting agents to allow smooth, even coverage of a surface. MIL–A–8243C fluid is specified in two types. Type i, used by the U.S. Air Force contains the ingredients described above while Type II, used by the U.S. Navy contains a small amount of additive to inhibit a chemical reaction between ethylene glycol and silver oxide. This additive is used to preclude a possible fire hazard relating to electrical relays and switches that incorporate silver oxide electrical contacts.

All known commercially available FPD fluids for aircraft deicing use are of the ethylene glycol family. The exact formula of various manufacturers' fluids are proprietary. It is very important to understand that other commercially available FPD fluids contain either ethylene glycol or derivatives of ethylene glycol such as diethylene glycol with small quantities of additives and water; that various FPD manufacturers, upon request, will premix aqueous solutions of FPD for specific customer reasons; and that before using a solution of FPD it is imperative that the ingredients be checked by close examination of the stock number and by a quality control examination to ascertain that the fluid supply conforms to the needs. FPD fluid manufacturers can supply methodology and suggest equipment needed for quality control examinations.

FPD fluids in use today have characteristics that are best defined by a

phase diagram or freeze chart as illustrated in figure 1. It is emphasized that this diagram is not representative of any commercially available FPD fluids. FPD fluid manufacturers can furnish phase diagrams for their product. This diagram illustrates the variation of the freezing point of various mixtures with water. FPD fluids are very soluble in water. The addition of glycol to water will lower the freezing point of the water mixture. The freezing point of glycol or a glycol/water mixture is not a sharp point as is the case with water alone. The freeze point of glycol or a glycol water mixture can be said to occur when crystals begin to form. As the temperature is lowered, glycol or water begins to crystallize and the mixture will assume a slushy consistency. As cooling proceeds the mixture will thicken and may no longer flow and eventually if cooled to very low temperature can solidify to a hard granular solid.

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PHASE DIAGRAM OF AQUEOUS GLYCOL SOLUTIONS

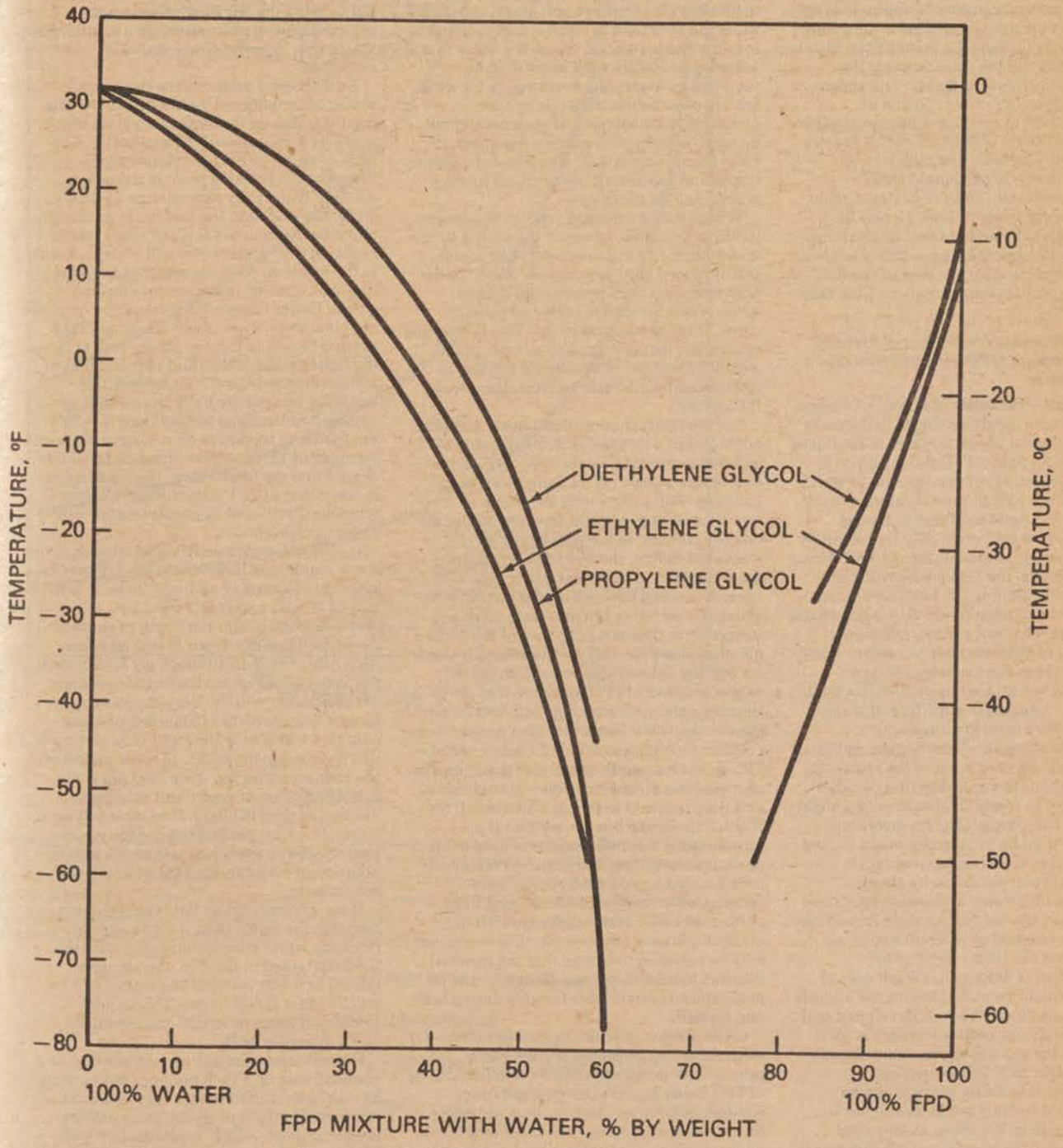

FIGURE 1

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It can be seen from figure 1 that minimum freeze point (onset of crystallization) occurs when the mixture consists of approximately 60% glycol and 40% water. This is commonly referred to as the eutectic point. It can also be seen that beyond the eutectic point the freezing temperature is higher. This means that pure glycol will freeze (onset of crystallization) at warmer temperatures than aqueous solutions of glycol. For this reason, all currently available commercial and military deicing fluids contain small quantities of water. This facilitates outside storage at cold temperatures. Generally, sufficient water is added to allow the freeze point to be not greater than −25°F. However, it is very important for the user of the fluid to know the specific characteristics of the fluid being used.

6. Capabilities and Limitations of Freezing Point Depressant (FPD) Aircraft Ground Deicing Fluids

a. *General*—The basic philosophy of using FPD fluids for aircraft deicing is to decrease the freezing point of water either in the liquid or crystal (ice) phase. FPD fluids are very soluble in water. However, the rate at which ice will absorb FPD or melt is rather slow. If frost, ice, or snow is adhering to a wing surface, that ice formation may be melted by application of proper quantities of FPD fluid. As the ice melts, the FPD mixes with the water thereby diluting the FPD. As dilution occurs, the resulting mixture may begin to run off. If all the ice is not melted, additional application of FPD becomes necessary until the fluid reaches the ice/wing surface interface. When all ice has melted, the liquid residue that remains is a mixture of water and FPD. There is no practical way to estimate the strength of this remaining film or to estimate the freeze point of the remaining film. Therefore the remaining film could freeze (begin to crystallize) with only a slight temperature decrease. Slight temperature decreases could be induced by many factors such as cold soaked fuel in wing tanks, reduction of solar radiation by cloud obscuration of the sun, ambient temperature cooling, wind effects, temperature depression during development of wing lift and other factors. Since the freeze point of the remaining film is unknown, a fresh coat of FPD fluid should be added before the aircraft is released for flight. Practice developed and accepted by the air carrier industry is to assure that the remaining film has a freezing point less than 20°F below ambient temperature. This entire process can be accomplished by any means available: i.e., pouring, mopping, brushing, or spraying. Freeze point of the remaining FPD film can be measured at specific locations on a surface using refractive index techniques.

b. *Non-Precipitation Conditions*—The above description is intended to describe the capabilities and limitations of FPD for deicing (getting the aircraft clean), in a very general way. As mentioned earlier there are many other methods of removing ice, frost, or snow deposits. Large quantities of FPD would be necessary to try to melt ice, frost, and snow and the use of this method alone may not be cost effective or timely. This is especially true with regard to snow deposits. The deicing process can possibly be accomplished more cost effectively by combining manual methods to first remove soft snow and then using the FPD fluid to remove any residual ice. In some instances, where the snow is not adhering to surfaces, all snow may be removed by sweeping, brushing, or blowing with cool air (either shop air or other pressurized air sources). Hot air should not be used to attempt to remove dry snow. In clear (nonprecipitation) weather, once proper inspection has been performed, no further action may be necessary.

Where modern ground support equipment (GSE) is available, common practice is to use water heated to approximately 180°F and glycol heated to approximately 150°F. Some GSE manufacturers recommend that hot water alone be used to melt and remove snow, frost, or ice formations. This is possible because of the heat applied as well as the mechanical force of the stream tending to melt, loosen, and flush ice formations from the aircraft.

Some manufacturers recommend that pure hot water can be used to deice the aircraft at ambient temperatures above +26°F. Below that temperature or if ice formations occur, sufficient FPD mixed with the water is recommended to prevent freezing during the deicing process. In the latter case, as discussed before, the freeze point of the remaining film may be unknown. Once the aircraft is clean (deiced) a final coat of FPD should be added to prevent freezing due to temperature depression by any of the factors mentioned earlier. If hot water alone is used for deicing, all surfaces should be coated with a solution of FPD to assure that the freezing point of remaining films will be no greater than 20°F below ambient temperature.

Other techniques include frequent use of FPD fluids during storage under conditions of precipitation or frost to reduce the workload and time required to prepare an aircraft for flight. Experience has shown that if ice formations are not allowed to adhere to an aircraft surface they are easier to remove. If ice formations can be prevented from forming, only final inspections need to be performed under some conditions. Under other conditions, however, further treatment may be required to assure that the residual film has a freezing point sufficiently low to prevent ice crystals from forming during taxi and takeoff.

c. *Conditions of Freezing Precipitation—(1) General.*—The foregoing section deals primarily with the capabilities and limitations of FPD fluids in clear (nonprecipitation) weather conditions. This section addresses the capabilities and limitations of FPD fluids under weather conditions where ice, frost, or snow may form. FPD fluids have the capability of preventing the formation of frost, ice, or snow for a finite period of time. The time of protection depends upon many factors and is therefore unpredictable. The primary factors that influence this time of protection are ambient temperature, surface temperature, FPD fluid film thickness, FPD mixture strength and the rate of addition of moisture. These factors are influenced by many other variables such as solar radiation, relative humidity, surface contour, surface inclination angle, surface roughness, wind effects, fluid application procedures, residual moisture on the surface prior to deicing, etc. But to bring the physical process into perspective one must visualize a simple case where only a few of these variables are examined.

As discussed earlier, once the deicing process is completed, a thin film of deicing fluid remains on the surface and this film contains a mixture of FPD and water. The ratio of water to FPD is unknown and therefore the freezing point is unknown. Assume that a very rich mixture of fluid is uniformly added to the surface in a manner that most moisture is flushed away while realizing that some water will always remain in the solution. Also assume that the fluid film that remains is 80 percent ethylene glycol. Under these assumptions, the question then becomes "How much water will be needed to add to this remaining film to cause the freeze point of the fluid to reach that of ambient temperature?" To answer this question, test results have shown that when ambient and surface temperature is +20°F the fluid film thickness on a surface sloped at an angle of 15° is at best (the most) 0.10 mm deep. From the freeze chart (figure 1) it can be seen that at 20°F a mixture of 16 percent ethylene glycol and 84 percent water will begin to crystalize.

(2) *Snow Conditions*—Precipitation rates in snow conditions have been found to contain water in amounts of up to 0.7 in/hr. A general rule of thumb, commonly used by meterologists, is that the depth of snow is about 10 times the depth of melted snow. This rule of thumb, although useful for some purposes, could be misleading, since snow densities vary widely. Very dry snow can have a density of 30:1 (30 inches of snow contains 1 inch of water) and very wet snow can have a density of 5:1. In snow conditions, the primary influence upon FPD life is the rate of addition of water and subsequent dilution of the FPD fluid. If snow is falling at a rate of ½ inch per hour and if the water content of this snow is 0.1, then the rate of addition of water to the FPD will be 0.021 mm/minute.

If we assume that as the falling snow contacts the surace film it melts and the resulting water mixes thoroughly with the fluid contained in the film, the strength (glycol to water ratio) of 16 percent will be reached in a specific time. This can be calculated using rationale and equations given in appendix B.

From this assessment we can see that at a snowfall rate of ½ inch per hour onto a wing having been coated with a very rich mixture, 100 percent ethylene glycol, at an ambient temperature of +20°F, crystalization will begin in approximately 25 minutes. Figure 2 presents the estimated life of deicing fluids as a function of ambient temperature for several snowfall rates. *Extreme caution is emphasized that these estimates should not be used to attempt to estimate the time available from deicing to takeoff as noted clearly on the chart.* The reason for this caution is that these estimated times are influenced by many variables, and figure 2 takes into account only a few. These variables are emphasized and their effects discussed in section 7 of this appendix.

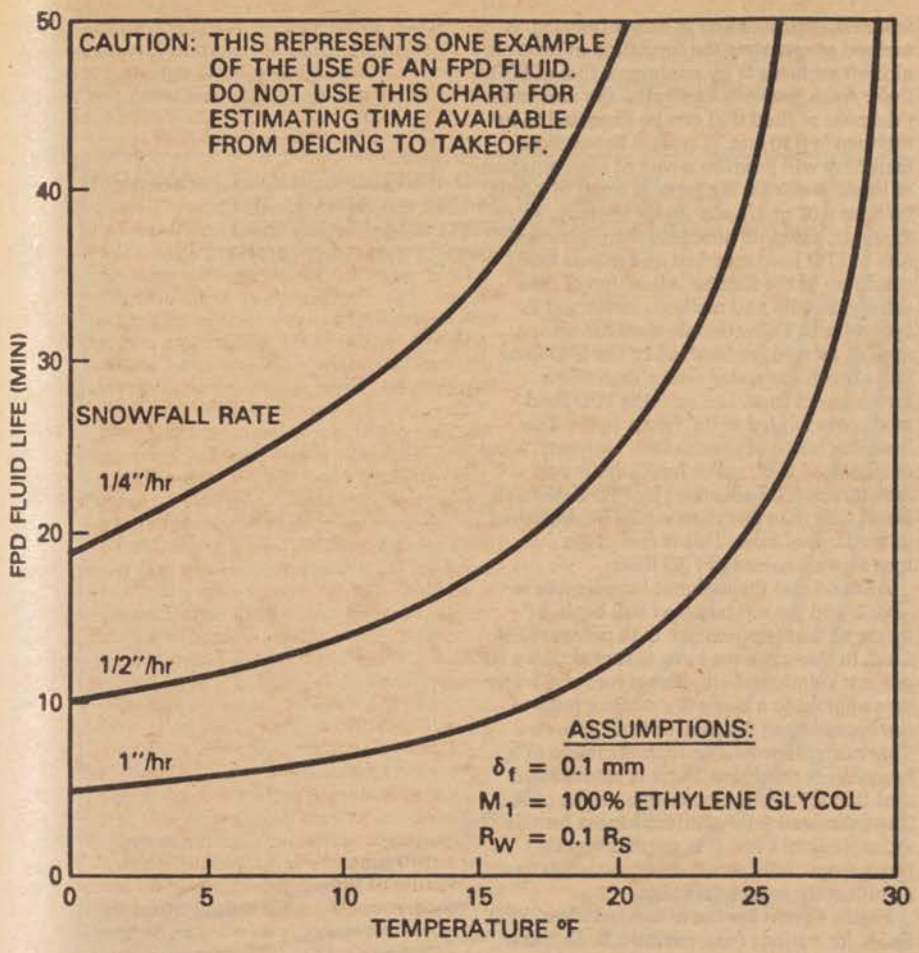

FIGURE 2

It is emphasized that the above rationalization regarding the finite life of FPD fluids is simplified for understanding purposes. Other physical processes occur within an FPD fluid film in the dynamic condition of precipitation or addition of moisture by any means. It is imperative that this process be understood by all associated with winter operations of aircraft.

To assist the understanding of this process, figure 3 depicts a surface containing a film of FPD fluid.

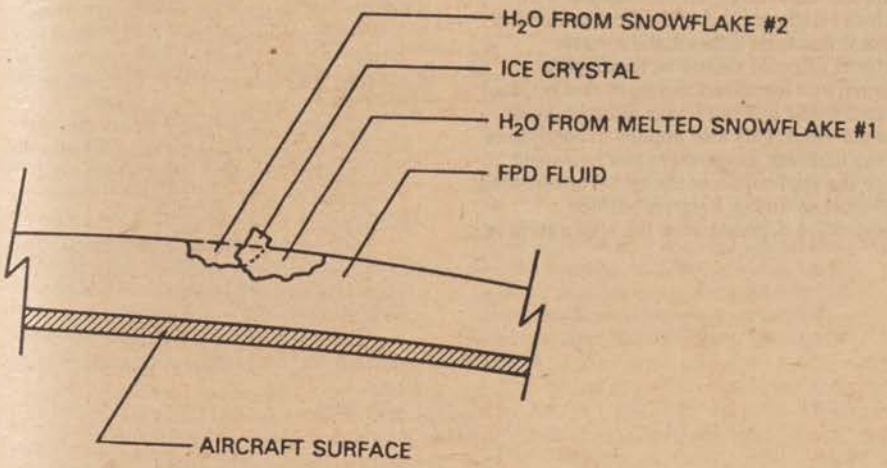

FIGURE 3

As snow contacts the upper surface of this film it melts and the water begins to mix with the FPD fluid. It is known that glycols are very soluble in water but it is also known that to assure a homogeneous fluid, the mixture must be agitated or stirred. So when a snowflake or other ice crystal, supercooled rain drop, or water in any form contacts the fluid film surface a finite time is required for the water to mix with the fluid. During this time, the water remains somewhat in pure form or a weak aqueous solution of FPD. If during this process, before the water from a snowflake mixes with the fluid, another snowflake impacts the surface, as depicted in figure 3, a portion of the snowflake may not melt immediately but will remain in ice-crystal form. This process has been observed during simulated snow testing. As snow continues to impact the surface, ice crystals can be seen to form on localized areas of the surface of the FPD fluid. Whether or not these ice crystals will bond to the aircraft surface depends upon many factors, such as: fluid film thickness, FPD fluid strength, surface temperature, ambient temperature and temperature of snow, rain, or ice crystals impacting the surface. Another factor is the latent heat of fusion, however, this affect is slight in comparison to heat transfer to ambient air or massive aircraft structures. As a snowflake impacts the FPD surface and melts, heat is transferred from the fluid to the ice crystal. This reduces the surface temperature and, as precipitation continues, the rate at which snow will melt is reduced.

If the FPD film is sufficiently thick, these surface ice crystals may initially be localized on or near the surface or be floating on the surface. But as the process continues, water being added will gradually mix with the FPD fluid and in time, the fluid in the surface film will reach an aqueous solution that will freeze (become slush) at the prevailing temperature and with time become frozen or adhere to the aircraft surface. As the quantity of slush increases, the viscosity of the surface film increases, requiring greater forces to cause the surface slush to be blown off of aircraft surfaces. Once the crystallization process begins, the chances of proper blow-off during takeoff roll are minimal. In addition, once the crystallization process begins, the surface may be expected to be a rough texture which can adversely impair aircraft performance and flight characteristics. It is also very important to understand that many varieties of snow occur in nature and each will result in differing characteristics (surface textures or roughness) during the process of dilution and crystalization of FPD fluid mixtures.

(3) *Frost Conditions*—Frost is formed from the sublimation of water vapor onto a surface where the temperature is below freezing. A method of retarding the formation of frost on aircraft surfaces is by applying a film of FPD fluid. As in previous examples, the maximum thickness of fluid that can be expected to be retained is 0.10 mm. A typical heavy frost condition will produce a rate of accumulation of liquid water (in the form of frost) of 0.0008 in/hr or 0.02 mm/hour. Again we may, as an example, estimate how long the protective film of FPD fluid may last and assess the condition of the fluid as a function of time using rationale and methods contained in appendix B. The rationale used for snow applies as well for frost, since the FPD fluid will absorb the water rather than allow formation of frost, i.e., until the FPD fluid mixture is diluted to its' freeze point. The frost can begin to accumulate. However, it is emphasized that, under frost conditions, moisture will be absorbed by FPD fluids at a faster rate than moisture would be deposited in the form of frost. This is due to the hygroscopic nature of FPD fluids.

Assume that the ambient temperature is +20°F and the mixture that will begin to freeze at that temperature is 16 percent FPD fluid. In this case, we have assumed that a 50 percent solution of ethylene glycol and water was applied to a clean dry surface prior to the beginning of the dew or frost process. This example would be representative of a heavy frost condition, but it is emphasized that film thickness also is an extreme case. The estimated time of effectiveness for this example is 10.4 hrs. It is emphasized that hygroscopic effects and other variables can significantly reduce this time.

Figure 4 provides the estimated life of FPD fluids for various frost conditions. *Extreme caution is emphasized that these estimates should not be used to attempt to estimate time available from de-icing to takeoff, as noted clearly on the chart.* Many other factors must be considered, such as type of FPD fluid, surfaces to which the fluid is applied, surface temperature, and other variables mentioned earlier. In addition, it is important to realize that when the FPD fluid has been diluted to the freeze point, crystallization has begun. Any slight reduction in surface temperature could result in further crystallization and dangerous surface roughness. After the frost protection process has been utilized, the aircraft surfaces affected should be thoroughly cleaned and inspected to assure that residual diluted fluids will not freeze during takeoff and climbout. This also applies to conditions where ambient temperature has increased since the application of the initial or repeated anti-frost solutions, because surface temperature depression on the upper surface

of a wing producing lift can be significant. Temperature depression is a function of wing design, airspeed, and the amount of lift being produced. The aircraft manufacturer can provide specific values of temperature depression for their aircraft. Care should be taken to assure that the residual surface film of FPD has a freeze point no greater that 20°F below ambient temperatures.

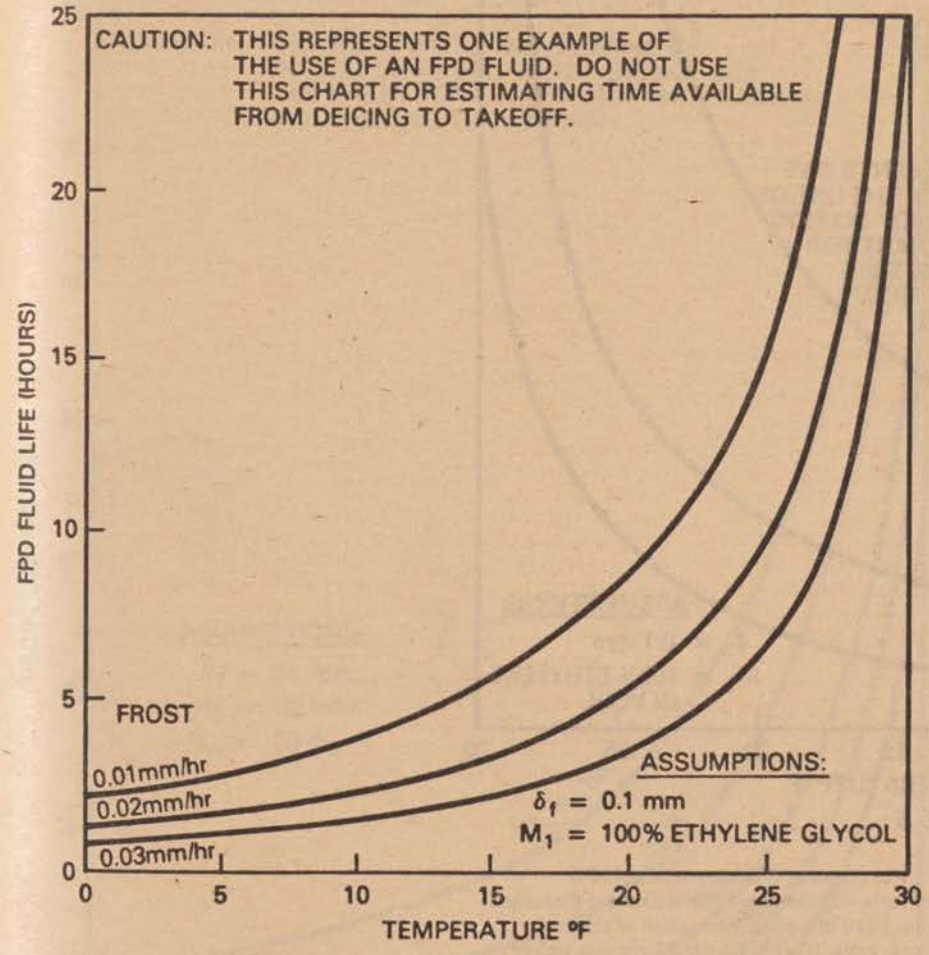

FIGURE 4

(4) *Freezing Rain and Drizzle Conditions*—Precipitation rates in freezing rain and drizzle conditions have been found to vary from about 0.3 to 5.0 mm per hour or about 0.01 to 0.20 in/hr. These conditions can occur at ambient temperatures between 32°F and approximately 12°F. Freezing rain and drizzle water droplets are in the supercooled liquid state and freeze upon impact with other objects. Because of the large size of freezing rain droplets (400 to 1300 microns) the ice produced is usually glaze ice. When an aircraft surface is coated with a film of FPD fluid, freezing rain and drizzle droplets impacting the fluid film will mix readily with FPD fluid, causing rapid dilution and under certain conditions can wash away the FPD fluid. The effectiveness of FPD fluids to provide protection in freezing rain conditions can be estimated using the techniques contained in appendix B. Under the most severe freezing rain conditions (5.0 mm/hour or about 0.2 in/hour) crystallization would be expected to begin in less than 11 minutes at 25°F if pure ethylene glycol were used and if FPD fluid film thickness is assumed to be 0.1 mm. Airline operational experience indicates that FPD fluids are short-lived in most freezing rain conditions. In many instances, one side of the aircraft already deiced will begin to refreeze while the other side is being deiced. Figure 5 provides estimated FPD fluid life as a function of ambient temperature for several freezing rain precipitation rates. *Extreme caution is emphasized that this chart should not be used to attempt to estimate time available from deicing to takeoff.*

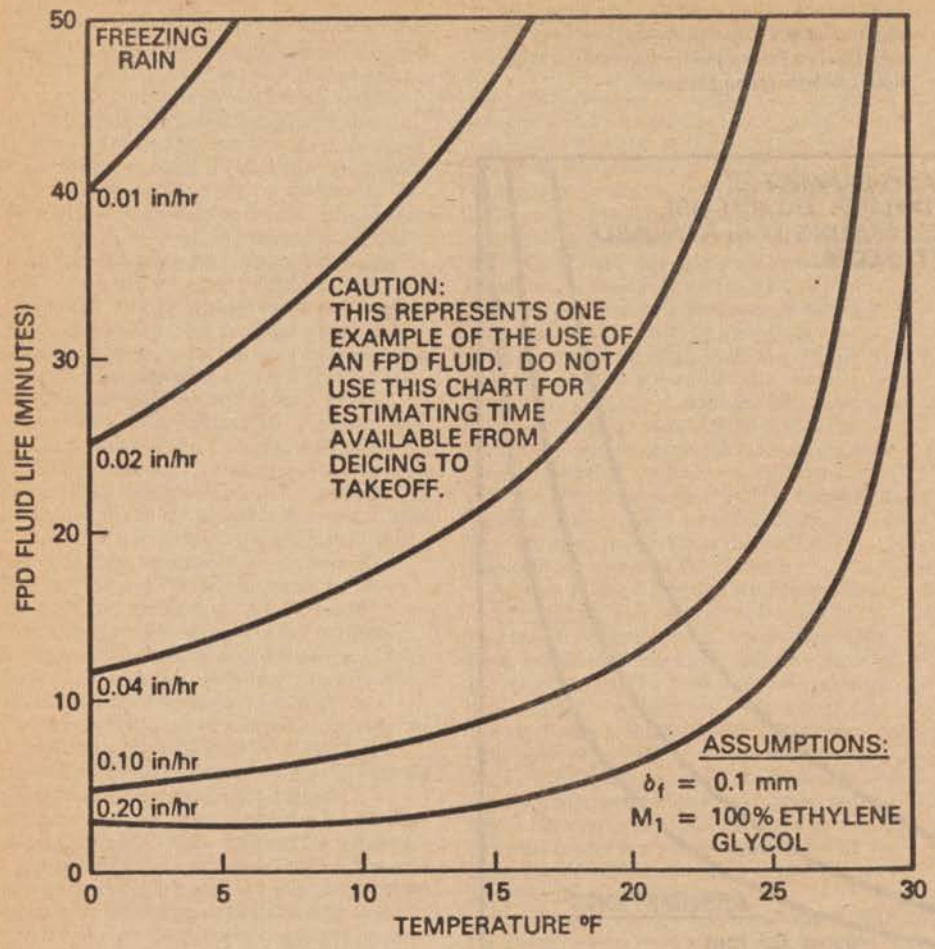

FIGURE 5

It is emphasized that aircraft ice protection systems are designed basically to cope with the supercooled cloud environment (not freezing rain). Supercooled cloud water droplets have a median volumetric diameter (MVD) of 5 to 50 microns. Freezing rain MVD is as great as 1300 microns. Large droplets of freezing rain impact much larger areas of aircraft components and will in time exceed the capability of most ice protection equipment. Flight in freezing rain should be avoided where practical.

7. Variables Influencing the Effectiveness of Aircraft Ground Deicing Fluids

Many variables can influence the effectiveness of FPD fluids for deicing and the life of these fluids, especially under conditions where moisture is being added to the fluid. This section is intended to provide a basic understanding of these variables and their influence. Each of these variables is discussed in the following paragraphs.

(a) Chemical Composition of FPD Fluids—FPD fluids intended for use in deicing aircraft are manufactured and distributed by a wide variety of companies either to manufacturer or customer specifications. Each may contain a combination of chemicals that have various freeze characteristics. Although each FPD fluid is manufactured within tolerances contained in the specification, batches may differ and may have significant variations in characteristics.

(b) Freezing Characteristics of FPD Fluids—These characteristics were discussed in detail in a previous section of this appendix. It is emphasized here that before a fluid is used on an aircraft, the freeze characteristics should be known by the user. A method of determining this is by thorough understanding of fluid procurement specifications and tolerances and quality control inspections or sampling either by the manufacturer or the user. In addition, FPD fluids are either premixed (diluted with water) by the manufacturer or mixed by the user from bulk supplies. To assure known freezing characteristics, samples of the final mixture should be analyzed.

(c) FPD Fluid Strength When Applied—Fluid strength or the ratio of FPD ingredients, such as ethylene glycol to water, may be known if proper precautions are taken prior to application such as those outlined above. It is important, however, to realize that fluid strength is a very significant factor in deicing properties as well as the time that the FPD fluid may remain effective.

Figure 6 presents estimates of ethylene glycol life as a function of ambient temperature for several commonly used fluid strengths. It can be seen that as fluid strength is increased, the time of effectiveness increases dramatically. *This figure is presented for reference purposes only to illustrate the variation of FPD fluid life and*

should not be used for flight planning purposes. It is also emphasized that pure (100 percent) FPD fluids should not be used in non-precipitation conditions, since the freeze point is much higher than fluids diluted with water, as illustrated in figure 1. Common practice of the aviation community is to never exceed the eutectic point of the FPD fluid under any condition.

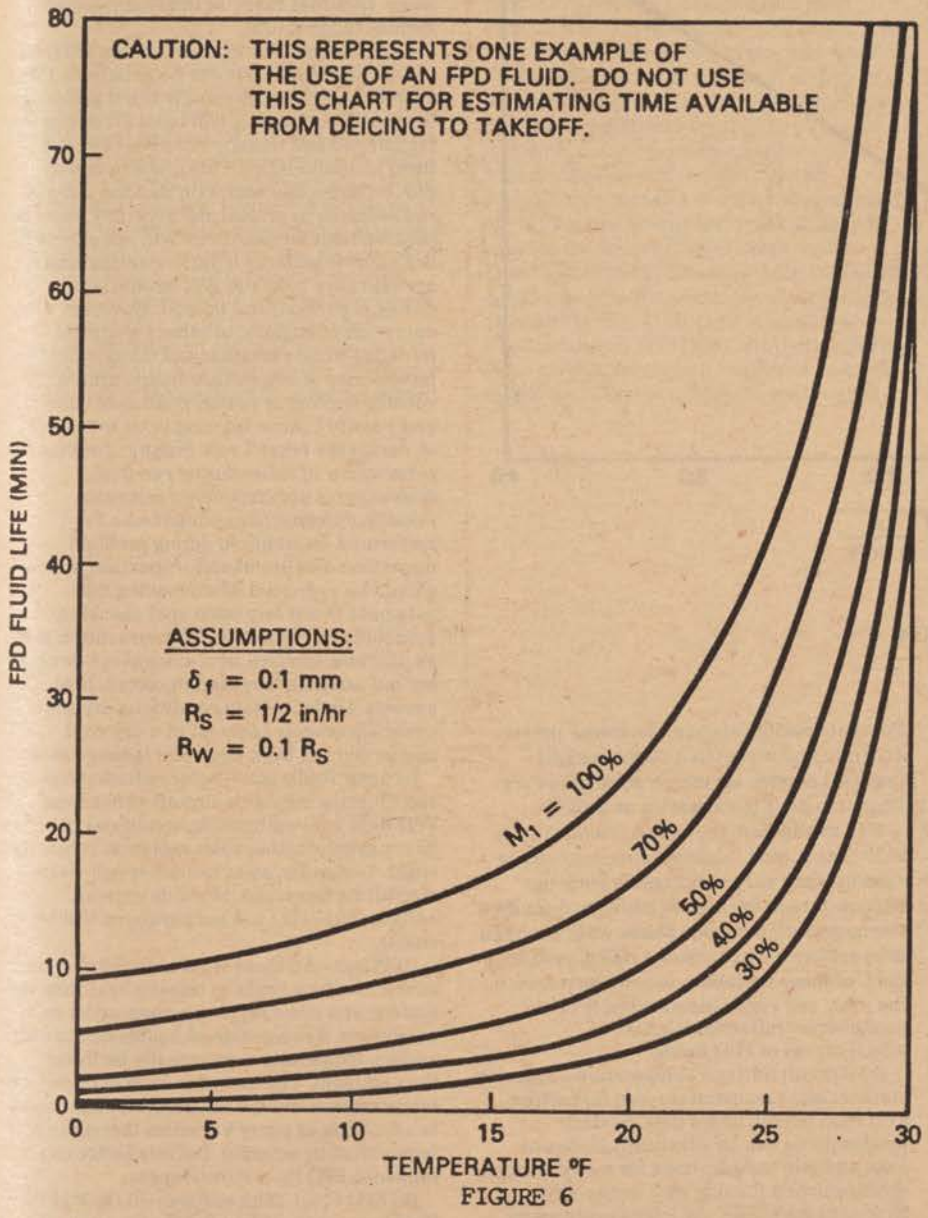

FIGURE 6

(d) Residual Moisture on the Surface—If a known (quantified strength) FPD fluid is added to a clean dry surface, the residual strength can generally be relied upon to remain at that strength if precipitation is not in process. However, if residual moisture (from any source; e.g., dew, melted ice, precipitation, etc.) is present on the surface that moisture can be expected to further dilute the FPD fluid being used. This will change the freeze characteristics and influence effectiveness time of the final film of FPD fluid.

(e) Fluid Film Thickness—After FPD fluid has been added to an aircraft surface, a thin film of FPD fluid will remain on the surface. This fluid film thickness has been found to vary from .002 mm to about .100 mm and is influenced by many parameters but primarily surface and fluid temperature, fluid viscosity, surface contour, surface inclination angle, and surface tension. Film thickness (on a finite area of the surface) influences the effectiveness of the fluid. The effectiveness of the FPD fluid will be different on various parts of the aircraft. Figure 7 presents an empirically derived relationship for estimating fluid film thickness as a function of several of these variables. It is emphasized that FPd fluid film thickness can vary significantly in the vicinity of surface discontinuities such as seams, cowling, inspection plates, rivets and screws, etc.

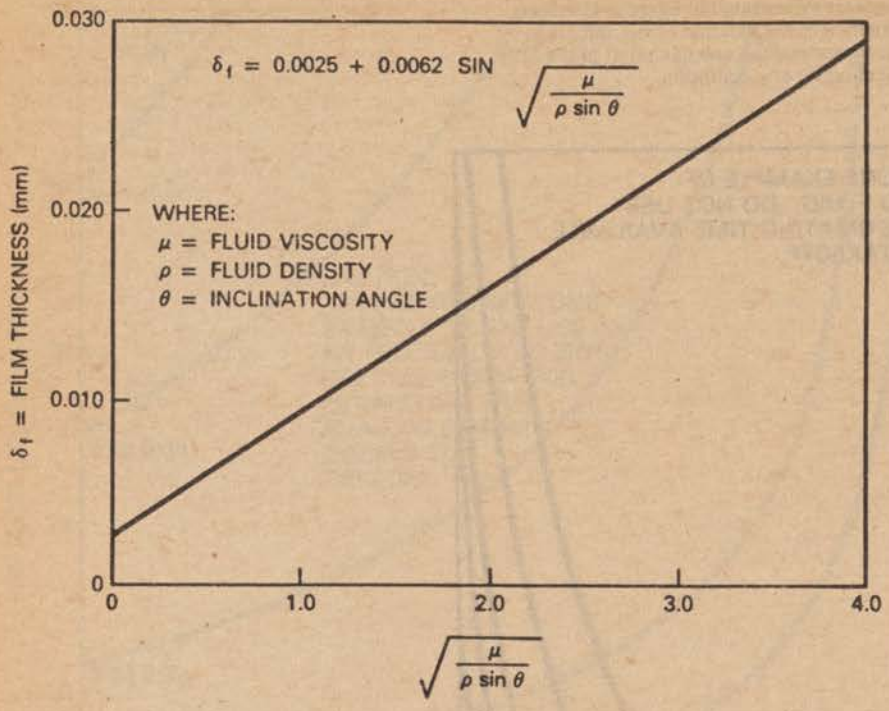

FIGURE 7

(f) FPD Fluid Application Techniques—Generally, FPD fluids, given time, will seek an equilibrium film thickness regardless of the method of application if the fluid is applied in a uniform manner using sufficient quantities of fluid. All FPD fluids in common use contain wetting agents to aid in this process. If sufficient fluid is not added to the surface, desired film thickness may not be achieved. If the FPD fluid is not uniformly applied, localized areas may be left with less than desired film thickness. In conditions of precipitation, if the rate of FPD application is slow, areas treated first with FPD fluid can have totally different characteristics than areas treated last. In cases where hot water alone is being used for deicing, areas previously oversprayed with FPD fluids can be diluted by water splashed or flowing from other areas being deiced. All of these factors are variables that can influence the effectiveness.

(g) Ambient Temperature—A specific mixture of FPD fluid wil freeze (begin to crystallize) at a specific ambient temperature. For that specific mixture, the freeze point is accurate and repeatable. Some cockpit installed outside air temperature gages are known to have inaccuracies as great as +5°C. In addition, the ambient temperature at the ramp, gate, tiedown area, taxiway or runway, may vary significantly from the temperature in the airport tower or from the thermometer on the line shack wall. Ambient temperature may be steady, rising, or falling. Each of these variables, usually unknown to the pilot, can either independently or in combination influence the time of effectiveness of FPD fluids.

(h) Aircraft Surface Temperature—Aircraft surface (skin) temperature also influences FPD fluid effectiveness time. Surface temperatures can be drastically different from ambient temperatures for many reasons: solar radiation (cloudy day, sunny day, parked in the shade, etc.); temperatures of fuel in fuel cells; the type and location of fuel cells; fuel cold soaked during previous high altitude flight; quantity of fuel in fuel cells; the source of fuel (above or below ground storage); time since refueling; engine operation; APU operation; operation of subsystems or components that generate heat; thickness of the skin, type of skins, and skin materials. These are only a few of the many variables that can influence aircraft surface temperature.

Common practice accepted in the aviation community is that if it can be determined that a small quantity of dry snow is not adhering to aircraft surfaces, it will blow off during the takeoff roll and thereby not affect aircraft flight characteristics. This practice is well proven if one can ascertain that the snow is not adhering to critical surfaces. Dry snow at cold ambient temperatures will not adhere to dry aircraft surfaces if surface temperatures are also very cold and will remain cold during start, taxi, and takeoff. However, operation of engines, or other equipment, refueling, solar radiation and many other factors may warm surface temperatures, causing melting or partial melting of snow and possibly cause freezing prior to takeoff or during the takeoff roll. *Simply checking the consistency of snow during pre-flight inspection is not considered adequate. Pretakeoff inspections should also be performed.* In addition, during preflight inspection and pretakeoff inspection, caution should be exercised when making this judgment to not rely upon spot checking, especially on areas of hollow structures, such as ailerons, spoilers, etc., since these devices are not normally exposed to certain heat sources. Under certain conditions dry snow could adequately blow off of a dry cold spoiler but not from large fuel tankage areas.

(i) Solar Radiation—Solar radiation can significantly influence aircraft surface and FPD fluid temperatures. In conditions of heavy precipitation, solar radiation is usually slight. Generally, solar radiation will warm aircraft surfaces, but, in shadow areas, surface and FPD fluid temperatures will be colder.

(j) Wind—Ambient wind blowing over an aircraft surface tends to remove heat from the surface at a more rapid rate than under calm conditions. Evaporation of liquids can cause surface temperatures to actually be lower than ambient. The rate of reduction of surface temperatures and the temperature depression is a function of many variables that make it impractical to estimate, but this factor can influence FPD fluid effectiveness.

(k) FPD Fluid Temperature—Elevated FPD fluid temperatures (hot fluid) are commonly used during the aircraft ground deicing process to assist in melting and reducing bond strength of ice formations. Fluid viscosity however is reduced with increases

of fluid temperature. This can reduce the residual surface film thickness that is an essential parameter in FPD fluid effectiveness. Also, if hot fluids are applied during precipitation conditions (snow or other ice crystal), during the time that elevated fluid temperatures remain, the heat provides a source of latent heat of fusion to melt impacting snow/ice crystals and to mix with and dilute the mixture. This process is favorable in that formation of water crystals in the upper surfaces of the fluid film will be delayed. However, in the presence of wind and other factors, the additional time, if any, cannot be estimated. If hot FPD fluids are not utilized, ice crystals (precipitation) impacting the fluid will melt and mix at a slower rate and the latent heat of fusion demand will depress the surface film temperature. Use of hot or cold FPD fluids is considered acceptable common practice, however, unheated fluids will leave greater amounts of residual film prolonging effectiveness while heated fluids are move effective in the deicing process.

(l) Precipitation Rate and Type—Subfreezing precipitation occurs in many forms; supercooled rain (freezing rain or drizzle), snow, sleet, and combinations thereof. Each of these conditions can produce an infinite variety of conditions and resulting characteristics on the surface of an aircraft. Snow has been categorized into 22 varieties, each having different crystalline structure and each containing various amounts of frozen water (density). Each type of precipitation contains droplets or ice crystals having various temperatures which may be equal to or below ambient temperature. These combined effects introduce another set of variables that cannot be quantitatively assessed to determine their influence upon effectiveness of FPD fluids. However, under these conditions surface roughness can vary significantly and in conjunction with other variables, time-to-initiation of freezing (surfaces roughness) can vary.

(m) Operation on Snow, Slush, or Wet Surfaces—Such operations can cause ice, snow or slush to be splashed or blown onto various aircraft surfaces. Jet engine exhaust (in forward or reverse thrust), jet engine inlet vortices, prop or rotor wash, and taxi and takeoff operations can, through recirculation, blowing, or splashing, cause snow, ice particles or water to impact various aircraft surfaces and freeze or adhere to these surfaces or further dilute FPD deicing fluids. These occurrences are somewhat predictable and should be expected during ground operations. The effect of these occurrences is unpredictable. If ice formations are anticipated, the clean aircraft concept must be implemented. These occurrences can also have an influence upon FPD fluid effectiveness.

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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). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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Last Listing October 8, 1982

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

S. 907 / Pub. L. 97–285 To amend sections 351 and 1751 of title 18 of the United States Code to provide penalties for crimes against Cabinet officers, Supreme Court Justices, and Presidential staff members, and for other purposes. (October 6, 1982; 96 Stat. 1219) Price: $1.75.

S. 2271 / Pub. L. 97–286 National Bureau of Standards Authorization Act for Fiscal Year 1983. (October 6, 1982; 96 Stat. 1222) Price: $1.75.

H.R. 3589 / Pub. L. 97–287 To authorize the exchange of certain land held by the Navajo Tribe and the Bureau of Land Management, and for other purposes. (October 6, 1982; 96 Stat. 1225) Price: $1.75.

H.R. 5081 / Pub. L. 97–288 To declare that the United States holds certain lands in trust for the Washoe Tribe of Nevada and California and to transfer certain other lands to the administration of the United States Forest Service. (October 6, 1982; 96 Stat. 1227) Price: $1.75.

H.J. Res. 612 / Pub. L. 97–289 To provide for the temporary extension of certain insurance programs relating to housing and community development, and for other purposes. (October 6, 1982; 96 Stat. 1230) Price: $1.75.

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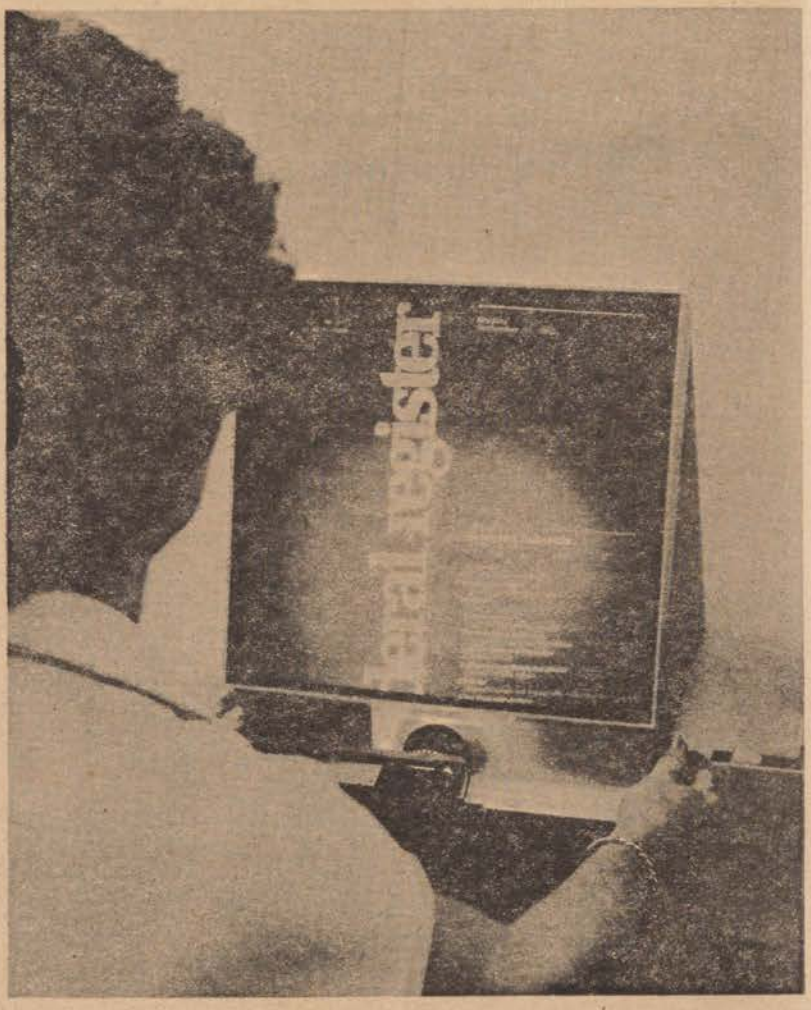

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